

WHEN RECORDED MAIL TO:

Reid H. Harbin, Esq.
Harbin & Miller LLC
5591 Chamblee Dunwoody Rd.
Bldg. 1300, Suite 300
Dunwoody, GA 30338

01073840 B: 2419 P: 1592

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Mary Ann Trussell, Summit County Utah Recorder
07/25/2017 10:32:53 AM Fee \$26.00

By First American - Sun Peak
Electronically Recorded

Tax APN: ET-14

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

THIS TRUST DEED, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT is made as of 7-21, 2017, between **PREMIER STORAGE INC.**, a Utah corporation, whose address is 2390 Westview Trail, Park City, Utah 84098, as TRUSTOR; **First American Title Insurance Company**, as TRUSTEE, whose address is 50 East 100 South, Suite 100, Park City, Utah 84098, and **Live Oak Banking Company** whose address is 1741 Tiburon Drive, Wilmington, NC 28403, as BENEFICIARY.

WITNESSETH: That Trustor CONVEYS, TRANSFERS, ASSIGNS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, FOR THE BENEFIT OF BENEFICIARY, the following described property, situated in Summit County, State of Utah:

See **Exhibit "A"** attached hereto (commonly known as 1333 South State Road 32, Francis, UT 84036).

Together with all the estate, right, title and interest that Trustor now has or may hereafter acquire, either in law or in equity, in and to the property described above; together with any amendment or restatement thereof, to have and to hold the same, together with all buildings, structures and improvements now or hereafter placed on the property and all alterations, additions or improvements now or hereafter made thereto, together with all fixtures, equipment, machinery, appliances and mechanical systems of every nature whether now or hereafter located in, on or used or intended to be used in connection with said buildings, structures and improvements or on the property, including without limitation those for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air and light and including without limitation all plumbing, plumbing fixtures, water heaters, furnaces, air conditioners, kitchen appliances, light fixtures, awnings, storm windows, storm doors, screens, blinds, shades, curtains, curtain rods, mirrors, cabinets, wall coverings, rugs, carpeting, floor coverings, telephone equipment, landscaping, trees and

plants, fences, security systems and outdoor lighting, and all other similar items and goods and all additions and replacements therefor, whether now or hereafter placed on the property or in any of the buildings or improvements thereon, and together with all easements, rights of way, covenants benefitting the property, singular lands, tenements, hereditaments, reversions, remainders, rents, leases, receipts, accounts, contract rights, contracts of sale or other dispositions, instruments, documents, general intangibles, deposit accounts, management agreements, operating agreements, issues, profits, privileges, water rights, water company shares of stock (with all certificates therefor to be delivered to Beneficiary), governmental permits, governmental entitlements, utility and other deposits and rebates, voting and other rights under any recorded or unrecorded declaration, articles, bylaws, or rules and regulations established by any owners' association or similar entity, declarant and other rights under any recorded or unrecorded covenants, conditions and restrictions, plans and specifications, studies, data, tests, reports and drawings, and appurtenances of every kind and nature thereunto belonging, relating or in any way appertaining, or which may be hereafter acquired and used or related to said property, or any part thereof, and together with all proceeds therefrom including without limitation insurance proceeds (all of the foregoing shall hereinafter be referred to as the "Property").

With all of the foregoing being referred to hereinafter as the "Property."

FOR THE PURPOSE OF SECURING the payment and performance of all obligations of Trustor and McMillan Mortuary, Inc under (1) a variable rate promissory note dated of even date herewith (the "Note"), in favor of Beneficiary in the stated principal amount of ONE MILLION NINE HUNDRED THOUSAND NO/100 DOLLARS (\$1,900,000.00), and all extensions and modifications thereof and other related loan documents (the "Loan Documents") executed in connection therewith; (2) the performance of each agreement of Trustor set forth in this Trust Deed; (3) the payment of such additional loans or advances as hereafter may be made to Trustor when evidenced by a promissory note or other document reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or of the Note, together with interest thereon as provided herein or therein.

An "event of default" or a "default" under this Trust Deed shall occur upon (1) any default or event of default occurring under the Note, (2) any default or event of default occurring under any other obligation secured by this Trust Deed, (3) any failure to meet or comply with Trustor's obligations under this Trust Deed, (4) any failure to pay any other prior encumbrances against the Property when due, (5) a receiver or a trustee being appointed for Trustor or with respect to Trustor's property, (6) Trustor making an assignment for benefit of creditors, (7) Trustor becoming insolvent, (8) a petition being filed by or against Trustor pursuant to any provision of the United States Bankruptcy Code, as amended, or (9) Trustor's sale, conveyance, or encumbrance of the Property, or any interest therein, except as expressly permitted by this Trust Deed.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep the Property in good condition and repair; not to remove or demolish any building or improvement; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property including without limitation all applicable local, state and federal laws, rules, regulations and ordinances relating to land use, zoning or protection of the environment, or to the generation, use, storage, removal, transportation, handling or disposal of toxic materials, hazardous substances, hazardous waste or other similar materials or substances; not to commit or permit waste on the Property; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary.

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may otherwise require, on the improvements now existing or hereafter constructed or placed on the Property.

Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses and mortgagee clauses in favor of and in form acceptable to Beneficiary. In the event of a loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary alone instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured, whether or not then due, or to the restoration or repair of the damage. In the event that the Trustor shall fail to provide satisfactory hazard insurance within thirty days prior to the expiration of any expiring policy, Beneficiary may procure, on the Trustor's behalf, insurance in favor of Beneficiary alone with Trustor being obligated to reimburse Beneficiary immediately for such costs. If insurance cannot be secured by the Trustor to provide the required coverage, or if Trustor fails to reimburse Beneficiary immediately for the costs of insurance incurred by Beneficiary, such event will constitute an event of default under the terms of this Trust Deed. In the event of the foreclosure of this Trust Deed or other transfer of title to the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of the Trustor in and to any insurance policy then in force shall pass to the purchaser or grantee.

3. To deliver to, pay for and maintain with Beneficiary until the Note and all other indebtedness secured hereby are paid in full, such evidence of title as Beneficiary may require, including policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

4. To appear in and defend any action or proceeding purporting to affect the liens and security interests granted hereby, the title to the Property, or the rights or powers of Beneficiary or Trustee; 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 incurred by Beneficiary and Trustee.

5. To pay at least 10 days before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest on the Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses incurred in connection with this Trust Deed.

6. Upon an event of default, including a default under the Note or Trustor's failure to make any payment or to do any act as provided in this Trust Deed, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor or Borrower from any obligation thereof or under the Note, may (i) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (ii) commence, appear in and defend any action or proceeding purporting to affect the Property or the rights or powers of Beneficiary or Trustee; (iii) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (iv) 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 and the employment of attorneys.

7. That the Beneficiary shall have the right to inspect the Property before, during or after construction is completed at any and all times during usual business hours.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee with interest from date of expenditure until paid at the higher of the default rates set forth in the Note. The repayment of such sums and interest shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

1. Should the Property or any part thereof be taken or damaged by reason of any public improvements or condemnation proceeding, or damaged by fire, earthquake, or flood, or in any other manner, Beneficiary shall be entitled to receive independently and solely all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, right of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the 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, whether or not then due. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

2. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the Note (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Property; and (e) take other or additional security for the payment thereof. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

3. So long as the indebtedness secured hereby is outstanding, Trustor hereby assigns absolutely to Beneficiary all leases, rents, issues, royalties, and profits of the Property and of any personal property located thereon, whether now existing or hereafter arising. Until a default occurs in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or an event of default under the Note or until Beneficiary gives notice otherwise, Trustor shall be permitted to collect all such rents, issues, royalties and profits earned prior to such event of default or, as the case may be, notice from Beneficiary, as they become due and payable. If such an event of default occurs or upon Beneficiary's notice, Trustor's privilege to collect any of such moneys and enjoy the benefits of such Property shall cease, and Beneficiary shall have the right, as stated above, with or without taking possession of the Property, to collect all leases, rents, royalties, issues, and profits and enjoy the benefits of such Property. Failure of or discontinuance by 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.

4. Upon any default hereunder or any default under the indebtedness secured hereby or under the Note, 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 such receiver without the posting of a bond or undertaking and consenting to the appointment of Beneficiary as such receiver), and without regard to the value of the Property or the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the 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 attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

5. The entering upon and taking possession of the Property, the appointment of a receiver, 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 the Property, and the application thereof shall not cure or waive any default or notice of default hereunder or under the Note or any of the other Loan Documents nor invalidate the rights of Beneficiary upon such default or under the notice of default nor any act done pursuant to such notice of default.

6. 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 or acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver of any other subsequent default.

7. In the event of the passage, after the date of this Trust Deed, of any law deducting from the value of the Property for the purposes of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of trust deeds or debts secured by trust deeds, or the manner of the collection of any such taxes, so as to affect this Trust Deed, the indebtedness secured hereby shall immediately become due and payable at the option of the Beneficiary.

8. Time is of the essence hereof. Upon default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, or upon the occurrence of any other default or event of default under the Note or any of the other Loan Documents, or in the event a receiver or a trustee is appointed for Trustor, or Trustor makes an assignment for benefit of creditors, or Trustor becomes insolvent, or a petition is filed by or against Trustor pursuant to any provisions of the United States Bankruptcy Code, as amended, all sums secured hereby shall immediately become due and payable in full at the option of Beneficiary. In the event of such default, and without any obligation on Beneficiary to give notice of such acceleration, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall, if requested, deposit with Trustee, the Note and all documents evidencing expenditures secured hereby.

9. At any time after the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, may sell the Property on the date and at the time and place designated in such notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may request, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any reason, postpone the sale from time to time to the extent permitted by law until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser its Trustee's deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Except as otherwise directed by applicable law, Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) the costs of any appraisals, environmental audits, and evidences of title procured in connection with such sale and any expenses associated with the Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest from the day of expenditure at the default rate set forth in the Note as allocated by Beneficiary in its discretion; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit or interplead the balance of such proceeds with the county clerk or a court of the county in which the sale took place.

10. Trustor agrees to surrender possession of the Property to the purchaser at the sale immediately after such sale in the event such possession has not previously been surrendered by Trustor.

11. Upon the occurrence of any default hereunder or any default under the indebtedness secured hereby, including a default under the Note or any of the other Loan Documents, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable in full and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages or trust deeds on real property, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto including appraisals, environmental audits, title reports, court costs and attorney's fees in such amount as shall be fixed by the court. Beneficiary's acceptance of this Trust Deed does not constitute a waiver of any events of default which may exist on the Note of the Loan Documents as of the date this Trust Deed is delivered by Trustor.

12. This Trust Deed is intended to be an assignment, security agreement and pledge pursuant to the Uniform Commercial Code and other applicable law for any of the items specified above as part of the Property which, under applicable law, may be subject to an assignment, security interest or pledge pursuant to the Uniform Commercial Code or such other law, and Trustor hereby grants Beneficiary a security interest in the items specified above as part of the Property which are personal property. This Trust Deed is also a financing statement and fixture filing and as such may be recorded in the real estate records of the county in which the Property is located. Trustor agrees that Beneficiary may file this Trust Deed, or a photocopy thereof, in any other jurisdiction or other appropriate index, as a financing statement for any of the items specified above as part of the Property or for any other purpose; in addition, Trustor agrees to execute and deliver to Beneficiary, upon Beneficiary's request, any other financing statements, as well as extensions, renewals and amendments thereto, and reproductions of this Trust Deed in such form as Beneficiary may require to perfect a security interest with respect to said items. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Trust Deed, or after the occurrence of an event of default under the Note, including breach of the covenants to pay when due all sums secured by this Trust Deed, Beneficiary shall have the remedies of a secured party under the Uniform Commercial Code and other applicable law and, at Beneficiary's option, may also invoke the remedies provided in this Trust Deed as to such items. In exercising any of said remedies, Beneficiary may proceed against the items of real property and any items of personal property collateral specified above as part of the Property separately or together and in any order whatsoever without in any way affecting the availability of Beneficiary's remedies under the Uniform Commercial Code or of the remedies provided in this Trust Deed and without affecting the personal liability of Trustor under the indebtedness secured by this Trust Deed. Portions of the Property may constitute goods which are or are to become fixtures on or relating to the improvements constructed on the Property, and this Trust Deed is to be recorded in the real estate records of the county in which the Property is located. Trustor covenants and agrees that, from and after the time of the recording of this Trust Deed, this Trust Deed shall constitute a fixture filing under the Uniform Commercial Code. Information concerning the security interest created hereby may be obtained from Beneficiary. The legal description of the Property in this Trust Deed is the legal description of the real estate upon which any fixtures covered by this Trust Deed are or may be located, and the Trustor is the record owner of such Property.

13. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed without notice to all the powers, duties, authority and title of the trustee named herein or of any successor trustee.

14. The rights and remedies of Beneficiary under this Trust Deed are cumulative and are in addition to any other remedies provided by law or under the Note. The exercise by Beneficiary of one right or remedy under this Trust Deed shall not constitute an election of remedies to the exclusion of other rights and remedies. Trustor hereby waives all claims that Beneficiary marshal assets of Trustor in collecting the

indebtedness secured hereby. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

15. Trustee accepts this Trust Deed when it is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other trust deed or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless such action or proceeding is brought by Trustee.

16. If all or any part of the Property or an interest therein is sold, transferred or encumbered voluntarily or involuntarily by Trustor (or if an ownership interest in Trustor is sold or transferred) without Beneficiary's prior written consent, which consent may be withheld for any reason, then Beneficiary may, at Beneficiary's option, declare all the sums secured by this Trust Deed to be immediately due and payable in full.

17. Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary, its successors, assigns, officers, directors, employees and agents for, from and against any loss, liability, cost, injury, expense or damage, including without limitation court costs and attorneys fees and expenses, in connection with or arising from the presence, escape, seepage, leakage, spillage, discharge or emission on or from the Property of any hazardous or toxic substances, materials or waste that are or may be regulated by federal, state or local law. This indemnification (a) shall survive the release, foreclosure or satisfaction of this Trust Deed or the transfer of the Property encumbered hereby, (b) is separate and distinct from the other obligations under this Trust Deed and the indebtedness secured hereby, (c) is not secured by this Trust Deed, and (d) shall be in addition to any other such indemnifications.

18. This Trust Deed shall be governed by and construed according to the laws of the State of North Carolina, except and only to the extent of procedural matters related to the perfection and enforcement of Beneficiary's rights and remedies against the Property, which matters shall be governed by the laws of the State of Utah. However, in the event that the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Trust Deed has been applied for considered, approved and made, and all necessary loan documents have been accepted by Beneficiary in the State of North Carolina.

19. Notwithstanding any provision herein or in the Note, the total liability for payments in the nature of interest shall not exceed the limits that may be imposed by the applicable laws of the State of Utah.

20. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Trust Deed or the rights of Beneficiary hereunder.

21. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address hereinbefore set forth.

22. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- b) Lender or SBA may use local or state procedures for purposes such as filing papers,

Exhibit "A"
Legal Description

The land referred to in this Commitment is located in Summit County, UT and is described as:
A PORTION OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN AND HAVING A BASIS OF BEARING TAKEN AS SOUTH BETWEEN THE NORTHWEST CORNER AND THE WEST 1/4 CORNER OF SAID SECTION 28, DESCRIBED AS FOLLOWS:

BEGINNING AT POINT SOUTH 665.71 FEET FROM THE NORTHWEST CORNER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 6 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 89°53'21" EAST 663.52 FEET ALONG AN OLD EXISTING FENCE LINE TO A FENCE LINE; THENCE SOUTH 0°33'46" EAST 504.28 FEET ALONG AN OLD EXISTING FENCE LINE; THENCE WEST 138.97 FEET; THENCE SOUTH 156.00 FEET TO AN EXISTING FENCE LINE; THENCE SOUTH 89°53'21" WEST 189.73 FEET ALONG A FENCE LINE; THENCE NORTH 0°40'11" WEST 625.03 FEET ALONG A FENCE LINE AND THE PROJECTION LINE OF SAID FENCE LINE; THENCE SOUTH 89°53'21" WEST 332.47 FEET; THENCE NORTH 35.00 FEET TO THE POINT OF BEGINNING.

Said property is also known by the street address of:
1333 South State Road 32, Park City, UT 84098