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 JEFFERY SMITH  
 UTAH COUNTY RECORDER  
 2017 Apr 11 11:38 am FEE 36.00 BY MA  
 RECORDED FOR BARLETT TITLE

WHEN RECORDED, MAIL TO:

Mountain West Small Business Finance  
 Attn: Scott Davis  
 2595 E. 3300 S.  
 Salt Lake City, Utah 84109

Tax Parcel Serial No. 30:061:0008

Bt 15131

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

This Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing (the "Trust Deed"), is made and given as of April 7, 2017, by IMN Real Estate Holdings LLC, a Utah limited liability company, whose address is 1851 West 200 South, Payson, Utah 84651 ("Trustor"), to and in favor of the Administrator of the Small Business Administration, an agency of the government of the United States of America, ("Trustee"), whose address is Federal Building Room 2229, 125 South State Street, Salt Lake City, Utah 84138, for the benefit of MOUNTAIN WEST SMALL BUSINESS FINANCE, a Utah nonprofit corporation, ("Beneficiary"), whose address is 2595 East 3300 South, Salt Lake City, Utah 84109. For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Trustor represents, warrants, covenants, and agrees as follows:

**ARTICLE 1: GRANT AND CONVEYANCE OF COLLATERAL**

1.01 **Conveyance of Real Property.** Trustor hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor's right, title, and interest, whether presently owned or hereafter arising, in and to: (a) the real property located in Utah County, Utah, which is more fully described in Exhibit A attached hereto and incorporated herein by this reference, together with any strips, gaps, gores, alleys, and rights to any adjoining vacated alley ways or streets pertaining or appurtenant thereto (the "Land"); (b) all buildings, structures, fixtures, facilities, and other improvements now or hereafter located on or attached to the Land (the "Improvements"); and (c) all water rights, water stock, royalties, mineral oil and gas rights and profits, rights-of-way, easements, leases (including without limitation any ground leases), subleases, rents, income, issues, profits, tenements, hereditaments, privileges, appurtenances, and similar rights used or enjoyed in connection with, or in any manner pertaining to or derived from, the Land or the Improvements. The foregoing are collectively referred to as the "Real Property."

1.02 **Security Interest in Personal Property.** Trustor hereby assigns and grants to Beneficiary a security interest in all of Trustor's right, title, and interest, whether presently existing or hereafter arising, in and to: (a) all furnishings, fixtures, equipment, materials, supplies, goods, and any other personal property now or hereafter located on, attached to, or used

in connection with the Real Property or the construction of any Improvements thereon, whether or not stored or located on or off the Real Property; (b) all insurance policies, insurance proceeds, unearned premiums, and condemnation awards with respect to any of the foregoing; and (c) all products and proceeds from any of the foregoing. The foregoing are collectively referred to as the “Personal Property,” and the Real Property and the Personal Property are collectively referred to as the “Collateral.”

A. **Secured Obligation**. This Trust Deed is given for the purpose of securing (a) the payment and performance of each and every agreement, obligation, liability, indebtedness, and undertaking of Trustor (including without limitation the obligation to pay principal, interest and other fees and charges, the “Loan”) in connection with or in any manner relating to a U.S. Small Business Administration Note of even or recent date herewith in the original principal amount of \$3,549,000.00 (as amended from time to time, the “Promissory Note”), together with all amendments, modifications, extensions, and renewals thereof, whether presently existing or hereafter made; (b) the payment and performance by Trustor or each agreement, obligation, liability, indebtedness, and undertaking contained in that certain Loan Agreement of even date herewith (the “Loan Agreement”), as the same may be amended, modified, or restated from time to time; (c) the payment and performance by Trustor of each agreement, obligation, liability, indebtedness, and undertaking contained in this Trust Deed or any other Loan Document (as defined in the Promissory Note) or any other agreement, document, or instrument made and given in connection with the loan evidenced by the Promissory Note, but excluding any environmental indemnity agreement; (d) the payment of all sums expended or advanced by Trustee or Beneficiary pursuant to the terms of this Trust Deed or any other Loan Document, together with interest thereon at the rate prescribed in the Promissory Note; and (e) the payment of such additional loans or extensions of credit as hereafter may be made by Beneficiary to Trustor, or its successors or assigns, when evidenced by a loan agreement, promissory note, or other written agreement reciting that such loans are secured by this Trust Deed. The obligations, liabilities, indebtedness, and undertakings referred to in the foregoing clauses (a) through (e) are referred to, collectively, as the “Secured Obligation”.

## ARTICLE 2: REPRESENTATIONS, WARRANTIES, AND COVENANTS OF TRUSTOR

2.01 **Construction of Improvements**. If Trustor undertakes the construction, remodeling, refurbishing, or rehabilitation of any improvements on the Real Property, Trustor agrees to diligently pursue the same to completion in a good and workmanlike manner and in accordance with all applicable laws, rules, regulations, building codes, and other requirements of any governmental agency or instrumentality having jurisdiction over the Real Property for the construction of any improvements thereon, and in accordance with any plans and specifications which have been or may hereafter be approved by Beneficiary.

2.02 **Preservation and Protection of the Collateral**. To preserve and protect the Collateral and Beneficiary’s security interest therein, Trustor hereby agrees and covenants as follows:

A. **Real Property**. Trustor shall keep and maintain the Real Property in good condition and repair. Trustor shall not remove or demolish any building, structure, or other

improvement on the Real Property, and shall complete or restore promptly and in good and workmanlike manner any Improvement which may be lost, damaged or destroyed without regard to the adequacy of any insurance covering such loss. Trustor shall comply with all laws, rules, regulations, covenants, and restrictions which may now or hereafter affect the Real Property or its use and enjoyment, and shall not commit or permit any waste thereof.

B. **Personal Property.** Trustor shall keep and maintain any tangible Personal Property in good condition and repair and shall not remove the same from the Land without Beneficiary's prior written consent; provided, however, if no Event of Default has occurred or is continuing, Trustor may remove items of Personal Property in the normal and ordinary course of its business where such removed items do not, individually or in the aggregate, constitute a material portion of the Personal Property.

2.03 **Insurance.** Trustor shall obtain and maintain insurance on all tangible Collateral in such amount, with such deductibles, and insuring against such risks and perils as is customary for persons owning and using similar types of property and as otherwise reasonably required by Beneficiary.

All policies of insurance required pursuant to this Section 2.03 shall be in form and substance acceptable to Beneficiary and issued by insurance companies acceptable to Beneficiary. No insurance company shall be acceptable to Beneficiary unless it has a company rating of not less than "A+" and a financial rating of not less than Class X in the most recent edition of "Best's Insurance Reports". Beneficiary shall be named as an "additional insured" under the Commercial General Liability Insurance, and as a "lender loss payee" under the builders "all risk" and property and casualty insurance policies, with an endorsement insuring that the payment for all claims will be made either to Beneficiary or jointly to Beneficiary and Trustor.

All policies shall contain a provision that such policies will not be canceled, terminated, or materially amended or altered without at least thirty (30) days prior written notice to Beneficiary. Where applicable, all policies shall have "agreed value" endorsements. In the event Trustor fails to provide, maintain, keep in force or deliver to Lender the policies of insurance required by this Section 2.03, Beneficiary or Trustee may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest, and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary or Trustee. If Trustor fails to pay any premiums after demand by Beneficiary or Trustee, Beneficiary, at Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance or any insurance covering Beneficiary's interest. Any sums so advanced, together with interest on such sums at the then current rate under the Promissory Note, shall be secured by this Trust Deed. Trustor shall deliver to Beneficiary a copy of the original of each of the policies of insurance that Trustor is required to obtain and maintain, or cause to be provided and maintained, under this Trust Deed. Trustor shall provide evidence of such insurance coverage that is satisfactory to Beneficiary, including a certificate known as ACORD 27.

2.04 **Losses and Claims Covered by Insurance.** In the event of any loss, damage, or casualty that is covered by insurance, Trustor shall give immediate notice to Beneficiary and the insurer. If Trustor fails to give such notice, or at any time that an Event of Default is continuing,

Beneficiary may make proof of loss on any insurance policy, and may settle and adjust all claims thereunder. Provided (a) no Event of Default has occurred and is continuing; (b) the amount of any insurance proceeds (plus any other funds committed by Trustor and delivered to Beneficiary or otherwise made available, as determined by Beneficiary in its sole discretion) are sufficient to restore and repair fully any damage or destruction to the insured property to the same or better condition prior to such destruction; (c) any restoration or repair can be completed prior to the maturity date of the Secured Obligation; (d) Trustor provides evidence satisfactory to Beneficiary that any lease of the Real Property will not be terminated prior to the time all restorations and repairs shall be completed; and (e) Trustor provides evidence satisfactory to Beneficiary that Trustor can satisfy any payment obligations on the Secured Obligation during the period of any restoration or repair, then in such event Trustor may use the insurance proceeds to restore and repair any damage to the insured property; provided, however, Beneficiary may, in its discretion, receive such insurance proceeds and control the disbursement thereof in accordance with the procedures in the Loan Documents for the disbursement of loan proceeds, if any, or such other procedures of Beneficiary with respect to the disbursement of funds on construction loans. If any of the conditions described in clauses (a) through (e) in the proceeding sentence have not been met to the satisfaction of Beneficiary, Beneficiary may, in its discretion, use or permit the use of any insurance proceeds to make partial restoration or repairs or to apply the same against the Secured Obligation.

2.05 **Taxes and Impositions.** Trustor shall pay, prior to delinquency, all taxes, assessments (general and special), and ground rents affecting, assessed against, or otherwise related to the Real Property, including without limitation all assessments upon water company stock. If requested by Beneficiary, Trustor shall provide evidence reasonably satisfactory to Beneficiary that such taxes and assessments have been timely paid. After the occurrence of an Event of Default or the failure by Trustor to pay any tax, assessment, insurance premium, or ground rent when due, Trustor shall pay to Beneficiary, should Beneficiary so require, on the first day of each month and until the Secured Obligation is paid in full, an amount equal to one-twelfth of (a) the yearly taxes and assessments which may attain priority over this Trust Deed, (b) any ground rents on the Land, (c) assessments of water stock or water rights used in connection with the Land, and (d) the yearly premium installments for insurance required to be provided by Trustor hereunder (collectively, the "Impositions"). The Impositions shall be held in an account in the name of Trustor but over which Beneficiary has exclusive control. Beneficiary shall apply the Imposition to pay said taxes, assessments, insurance premiums, and ground rents, if any. Beneficiary may not charge for so holding and applying the Impositions, analyzing said account or verifying and compiling said assessments and bills, unless Beneficiary pays Trustor interest on the Impositions and applicable law permits Beneficiary to make such a charge. The Impositions are pledged as additional security for the sums secured by this Trust Deed. If the amount of the Impositions held by Beneficiary, together with the future monthly installments of Impositions payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor on monthly installments of Impositions. If the amount of the Impositions held by Beneficiary shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof.

2.06 **Defense of Title; Discharge of Liens.** Trustor represents and warrants to Beneficiary that Trustor is the owner of good and marketable fee title to the Collateral free and clear of any lien, claim, or encumbrance (collectively, "Liens") except the Lien granted to Beneficiary in this Trust Deed and the first priority lien held by Central Bank. Trustor shall not create or grant, or cause or allow by operation of law, any other Lien with respect to the Collateral other than the Lien granted herein to Beneficiary and the first priority lien held by Central Bank, even if such other Liens may be junior or subordinate to the Lien of Beneficiary. Trustor shall promptly pay, remove, and discharge any Lien against the Collateral other than the first priority lien held by Central Bank, whether or not the same may have priority over the Lien of Beneficiary. Trustor shall promptly give notice to Beneficiary of the assertion of any Lien against the Collateral, or any litigation or proceeding pertaining thereto. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Collateral, or the rights or powers of Beneficiary or Trustee; provided, however, should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, Trustor agrees to pay all costs and expenses incurred by Beneficiary or Trustee, including without limitation costs of evidence of title and reasonable attorney's fees.

2.07 **Performance in Trustor's Stead.** Should Trustor fail to make any payment or to do any act as required herein, then either Beneficiary or Trustee may, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, and in so doing Beneficiary or Trustee are authorized to enter upon the Real Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, settle, discharge, or compromise any Lien which in the judgment of either appears to be prior or superior to the Lien granted in this Trust Deed; and (d) in exercising any such powers or rights, incur any liability and expend such sums as it in its absolute discretion may deem necessary therefor, including without limitation the cost of completing any improvements, the cost of evidence of title, and the costs of retaining counsel. Trustor agrees to pay immediately on demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the default rate set forth in the Loan Documents (or if no default rate is set forth therein, then at a rate equal to then effective interest rate under the Promissory Note plus five percent (5%) per annum) and the repayment thereof shall be secured hereby.

2.08 **Restrictions on Transfers.** Except as otherwise provided in the Loan Documents, Trustor shall not Transfer (as hereinafter defined) the Collateral or any part thereof without first obtaining the written consent of the Beneficiary. Any such Transfer, if the Beneficiary shall not so consent, shall constitute an Event of Default under the terms of this Trust Deed and the Loan Documents, and upon the occurrence thereof Beneficiary may cause this Trust Deed to be foreclosed and the Collateral sold in accordance with law. Should Beneficiary give its consent to any Transfer, Beneficiary may require, as a condition to such consent, an adjustment of the interest rate with respect to the Promissory Note, the payment of a transfer fee, or such other condition as it deems appropriate. As used herein, a "Transfer" means any voluntary or involuntary assignment, transfer, conveyance, pledge, encumbrance, hypothecation, sale, or disposition, or an agreement to assign, transfer, convey, pledge, encumber, hypothecate, sell, or dispose of, all or any part of the Collateral. A Transfer shall

exclude any lease of the Land or the Improvements for a term of less than six years (including all renewals) at market rates, terms, and conditions; provided, however, the agreement evidencing such lease shall contain a clause whereby such lease is automatically subordinated to this Trust Deed and, if the lease is for a term of more than three (3) years, shall provide for annual rental adjustments at market rates and terms. If Trustor is not a natural person, a Transfer shall be deemed to have occurred if (a) Trustor assigns, sells, transfers, or conveys substantially all of its assets; (b) Trustor enters into any merger, consolidation, or similar reorganization where the resulting or surviving entity is not Trustor; (c) more than 20% of any ownership, partnership, membership, or equity interest in Trustor, however the same may be classified, is transferred to any person who is not an owner or holder of equity interests as of the date hereof; or (d) any agreement or option is entered into which encompasses any of the foregoing.

2.09 **Further Assurances.** Trustor shall promptly execute and deliver to Beneficiary such other documents and instruments as Beneficiary may reasonably request to further effect or perfect Beneficiary's security interest in the Collateral, including without limitation UCC-1 financing statements. Trustor shall do such other acts as Beneficiary may reasonably request to carry out more effectively the purposes of this Trust Deed and to subject any property intended to be covered or intended to be covered by this Trust Deed to the Lien of Beneficiary created herein.

2.10 **Hazardous Materials.** Trustor represents and warrants to Beneficiary that except as disclosed in an environmental site assessment, if any, provided to Beneficiary in connection with the Promissory Note, to the best of Trustor's knowledge (a) no Hazardous Material (as hereinafter defined) has been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Land or the Improvements; and (b) Trustor has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Land or the Improvements. Trustor hereby agrees to indemnify, hold harmless and defend (by counsel of Beneficiary's choice) Beneficiary, its directors, officers, employees, agent, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (x) the presence on or under the Real Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under, from, or affecting the Land, or (y) any activity carried on or undertaken on or off the Land, whether prior to or during the term of the Promissory Note, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Land, in connection with the handling, treatment, removal, storage, decontamination, clean up, transport or disposal of any Hazardous Materials at any time located or present on or under the Land. The foregoing indemnity shall further apply to any residual contamination on or under the Land, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Trustor hereby acknowledges and agrees that, notwithstanding any other provision of this Trust Deed or

any of the other Loan Documents to the contrary, including without limitation any “non-recourse” or “limited recourse” clauses, the obligations of Trustor under this Section 2.10 shall be unlimited personal obligations of Trustor and shall survive any foreclosure under this Trust Deed, any transfer in lieu thereof, and any satisfaction of the obligations of Trustor in connection with the Secured Obligation. Trustor acknowledges that Beneficiary’s appraisal of the Land is such that Beneficiary would not extend the loan evidenced by the Promissory Note but for the personal liability undertaken by Trustor for the obligations under this Section 2.10. As used herein, “Hazardous Materials” means (a) “hazardous waste” as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U. S. C. Section 6901 et seq.), including any future amendments thereto, and regulations promulgated thereunder; (b) “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U. S. C. Section 9601 et seq.), including any future amendments thereto, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty or filled or partially filled with any substance; (f) any substance the presence of which is or becomes prohibited by any federal, state, or local law, ordinance, rule, or regulation; and (g) any hazardous or toxic substance, material, or waste which under any federal, state, or local law, ordinance, rule, or regulation requires special handling or notification in its collection, storage, treatment or disposal.

### ARTICLE 3: MUTUAL COVENANTS AND AGREEMENTS

3.01 **Condemnation Awards.** Should the Real Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled to all compensation, awards, and other payments for relief therefor (collectively, the “Awards”). Beneficiary 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 Awards, and all rights of action and proceeds with respect thereto, are hereby assigned to Beneficiary as part of the Collateral. Beneficiary may, after deducting therefrom all its expenses, including attorney’s fees pertaining to such proceedings, apply any Award against the Secured Obligation. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

3.02 **Plats, Easements, and Reconveyances.** 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 Promissory Note for endorsement (in case of full reconveyance), without affecting the liability of any person for the payment of the Secured Obligation, Trustee may (a) consent to the making of any map or plat of the Land; (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 Real Property. 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 Section 3.02.

#### **ARTICLE 4: ASSIGNMENT OF LEASES AND RENTS**

4.01 **Assignment.** As additional security for the Secured Obligations, Trustor hereby assigns to Beneficiary all leases, subleases, rents, issues, profits, and income with respect to or in any manner arising from the Collateral or the use or enjoyment thereof, whether the same are presently existing or hereafter created or arising. The assignment granted herein shall be deemed an absolute assignment. Nevertheless, until Trustor shall default in the payment of any of the Secured Obligation or in the performance of any agreement or undertaking in this Trust Deed or any other Loan Document, Trustor shall have a revocable license to collect and use all such rents, issues, royalties, profits, and income which become payable, and have been collected, prior to such default. If Trustor shall default as aforesaid, Trustor's license to collect any of such moneys shall automatically cease and Beneficiary shall have the right to collect all such rents, royalties, issues, profits, and income. Beneficiary may enforce such right with or without taking possession of the Collateral, whether or not Beneficiary has commenced any foreclosure or similar proceedings, and without regard to the adequacy of any other Collateral to satisfy the Secured Obligations or the danger of any of the Collateral being lost, damaged, destroyed, or consumed. Beneficiary may endorse and deposit any check or other item evidencing payments received under this Section 4.01, either in its own name or that of Trustor. 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 Security Instrument to any such tenancy, lease or option.

#### **ARTICLE 5: EVENTS OF DEFAULTS; REMEDIES**

5.01 **Events of Default.** The occurrence or existence of any of the following events or conditions constitutes an "Event of Default" under the terms of this Trust Deed:

- A. The occurrence of an "Event of Default" as defined in the Loan Agreement or the occurrence of an event of default under or with respect to any of the other Loan Documents.
- B. Any representation or warranty made by Trustor in this Trust Deed is untrue at the time when made in any material respect.
- C. Any bankruptcy, insolvency, reorganization, receivership, liquidation, dissolution, arrangement for the benefit of creditors, or similar proceeding is instituted by or against Trustor, any other person who may be directly or indirectly liable for any portion of the Secured Obligation, or with respect to any of the Collateral; provided, however, if such proceedings are involuntary, Trustor shall have sixty (60) days from the commencement thereof to have the same dismissed.
- D. A default by Trustor in the performance of any other duty, obligation, covenant, or undertaking contained in this Trust Deed or in any other agreement between Trustor and Beneficiary, whether presently existing or hereafter arising, other than a matter constituting a



separate and distinct event of default under this Trust Deed or the Loan Documents, and the continuance of the same without cure for a period of twenty (20) days after written notice by Beneficiary or Trustee.

5.02 **Remedies.** Upon the occurrence of an Event of Default hereunder, the entire Secured Obligation shall become immediately due and payable without notice, presentment, or demand, all of which are hereby waived by Trustor. 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 Secured Obligations, enter upon and take possession of the Collateral or any part thereof. Beneficiary may, in its own name or that of Trustor, sue or otherwise collect any rents, issues, profits, or other income constituting part of the Collateral, including those past due and unpaid. Beneficiary may settle, discharge, abandon, compromise, or otherwise deal with any claim pertaining to the Collateral upon such terms and conditions as Beneficiary in good faith deems necessary or appropriate. Any sums or monies collected by Beneficiary, less the costs and expenses of operation and collection, including reasonable attorney's fees, shall be applied against the Secured Obligations in such order or priority as Beneficiary may determine. The entering upon and taking possession of the Collateral, the collection of such rents, issues, and profits, or the collection of proceeds of fire and other insurance policies or condemnation awards, and the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, nor shall it invalidate any act done pursuant to such notice. Beneficiary shall have all of the rights and remedies of a secured creditor under applicable law. The failure on the part of Beneficiary to promptly enforce any right or pursue any remedy hereunder shall not operate as a waiver of such right or remedy; the waiver by Beneficiary of any default shall not constitute a waiver of such right or remedy; and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

5.03 **Foreclosure or Exercise of Power of Sale.** Upon the occurrence of an Event of Default Beneficiary may elect to foreclose this Trust Deed as a mortgage or to exercise the power of sale granted herein. The initial election by Beneficiary to pursue a judicial foreclosure or trustee's sale shall not constitute an election of remedies or otherwise prevent Beneficiary from stopping or suspending the pursuit of a particular remedy and, instead, pursuing any other remedy. In pursuing any remedy, Beneficiary shall comply with, and be entitled to the benefits of, all applicable laws at the time such remedy is pursued, including, without limitation, those applicable to the exercise of the power of sale pursuant to the trust deed statutes then in effect; provided, however, if the trust deed statutes have been repealed or the remedies therein have been, in Beneficiary's opinion, curtailed, then Beneficiary may, if the statutes so permit, apply applicable law at the time this Trust Deed is executed.

5.04 **Foreclosure Expenses.** Trustor acknowledges that, as a result of any default hereunder, Trustee or Beneficiary may elect to obtain title or foreclosure reports, title policies in favor of purchasers at any foreclosure or trustee's sale, appraisals, environmental site assessments, engineering reports, the services of an attorney, and other professional services to determine the condition, status, and value of the Collateral or to assist it in any foreclosure proceeding or the exercise of the power of sale granted herein. Such costs and expenses are a foreseeable consequence of any Event of Default and the pursuit of Beneficiary's remedies as a result thereof, whether incurred in connection with a judicial foreclosure, trustee's sale, or deed-

in-lieu of foreclosure. All costs and expenses incurred in connection therewith shall be secured by this Trust Deed and Trustor agrees to reimburse Trustee or Beneficiary for the same upon demand.

5.05 **Power of Sale.** If Beneficiary exercises the power of sale granted herein and under the trust deed statutes of the state in which the Land is located, Trustee and/or Beneficiary shall follow the procedures required by law for the exercise of such power of sale. At the date, place and time designated for the trustee's sale, Trustee, without demand on Trustor, shall sell the Real Property either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or, with the consent of Beneficiary, within a reasonable time thereafter. The person conducting the sale may for any cause he deems expedient, postpone the sale from time to time until it shall be completed in accordance with applicable law, 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 or as otherwise required by law. 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 fact shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale and purchase all or any part of the Real Property. Beneficiary may also sell any of the Personal Property at the trustee's sale in accordance with applicable law. Trustor hereby agrees that any notice of sale with respect to the Real Property may also include notice of sale of any Personal Property, and agrees that such notice shall be commercial reasonable in all respects and for all purposes, including those of the Uniform Commercial Code. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of sale, including the payment of the reasonable Trustee's and attorney's fees and other costs and expenses actually incurred by the Trustee and the Beneficiary pursuant to Section 5.04 above; (2) the cost of any evidence of title procured in connection with such sale and revenue stamps on any Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest from date of expenditure as provided herein; (4) the Secured Obligations and 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 the balance of such proceeds with the County Clerk of the county in which the sale took place.

5.06 **Successor Trustee.** 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 Real Property or some part thereof is situated, a substitution of trustee as required by law. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

5.07 **Security Agreement under Uniform Commercial Code.** This Trust Deed is also intended to be a security agreement within the meaning of the Utah Uniform Commercial Code (the "UCC") with respect to the Personal Property and any other part of the Collateral which may be classified as property subject to Article 9 of the UCC (collectively, the "UCC").

Property”), and Trustor hereby assigns and grants to Beneficiary a security interest in the UCC Property. Beneficiary shall have all rights and remedies of a secured creditor with respect to the UCC Property as provided by law. Upon the occurrence of an Event of Default hereunder, Beneficiary shall be entitled to all of the benefits of, and may pursue any remedy with respect to, the UCC Property in accordance with the provisions of the UCC. Trustor agrees to cooperate with Beneficiary by assembling the UCC Property and make it available to Beneficiary at such place as Beneficiary may reasonably designate. Trustee and/or Beneficiary may sell any UCC Property at the time of, and in connection with, and foreclosure or trustee’s sale of the Real Property.

5.08 **Financing Statement and Fixture Filing.** This Trust Deed is intended to be a financing statement and fixture filing pursuant to the UCC with respect to the UCC Property. A photocopy of this Trust Deed may be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code, as a financing statement. By filing this Trust Deed with the county recorder in which the Land is located, this Trust Deed shall also constitute a fixture filing satisfying the requirements of the UCC. For the foregoing purposes, Trustor is the “debtor,” Beneficiary is the “secured party,” the addresses of each are as set forth at the beginning of this Trust Deed, the real property upon which the UCC Property is located is the Land and Trustor is the owner thereof, and this Trust Deed is to be filed in the real estate records of the county in which the Land is located.

## ARTICLE 6: GENERAL PROVISIONS

6.01 **Successors and Assigns.** This Trust Deed shall apply to, inure to the benefit of, and shall be binding on, Trustor, Trustee, and Beneficiary, and their respective heirs, legatees, devisees, administrators, executors, successors and assigns, subject, however, to the restrictions on assignment contained herein.

6.02 **Joint and Several Liability.** If more than one person is signing as Trustor, the term “Trustor” shall refer to such persons individually and joint, and all obligations and liabilities of such Trustors hereunder shall be joint and several.

6.03 **Acceptance by Trustee.** Trustee accepts the trust created by this Trust Deed when this Trust Deed has been duly executed, acknowledged, and made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust, mortgage, or security agreement, or of any action in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

6.04 **Choice of Laws.** This Trust Deed shall be construed according to the laws of the State of Utah.

6.05 **Request for Notice of Default.** Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at its address set forth on the first page of this Trust Deed; provided, however, such notices may, at the election of Trustee or Beneficiary, be sent to any other address for Trustor which Trustee or Beneficiary reasonably and good faith deem to be correct and appropriate. Trustor may change the address to which

notice shall be sent only by sending to Beneficiary, by certified or registered mail, return receipt requested, written notice requesting that notice be sent to a different address.

6.06 **Indemnification**. Trustor agrees to indemnify, defend, and hold harmless Trustee, Beneficiary, and their respective employees and agents, from and against any loss, liability, demand, judgment, cost, expense, or other claim made or asserted against them with respect to, or in any manner arising from, this Trust Deed or the performance of any act or omission in connection herewith (the "Indemnified Claims"); provided, however, the Indemnified Claims shall not include any matter arising solely from the gross negligence of willful misconduct of the person seeking such indemnification. Without limiting the foregoing, Indemnified Claims include those matters arising from any unsafe or dangerous condition of the Collateral; any injury sustained by any licensee, employee, or invitee on the Real Property; and any environmental claim made or arising with respect to the condition of the Real Property, any hazardous substance or material located thereon, or the protection of the environment or the public health. This Section 6.06 shall survive the exercise of any right or remedy provided herein, the payment of the Secured Obligation, and the release, reconveyance, or discharge of this Trust Deed or the security interests granted herein.

6.07 **SBA Provisions**. 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, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

[signature page to follow]



**EXHIBIT A**

(Legal Description of the Land)

The following real property is located in Utah County, Utah:

Beginning at a point on the South right-of-way fence of a county road (10400 South), said point being South  $0^{\circ}29'58''$  East 37.00 feet from the Northeast corner of Section 13, Township 9 South, Range 1 East, Salt Lake Base and Meridian; and running thence South  $0^{\circ}29'58''$  East 2516.66 feet along the Section line to a railroad right-of-way line; thence North  $35^{\circ}51'32''$  East 2225.18 feet along said railroad right-of-way line; thence North 86.31 feet; thence North  $35^{\circ}51'32''$  East 218.82 feet to the Northerly line of a ditch; thence North  $89^{\circ}53'28''$  West 590.00 feet along the North line of said ditch; thence North  $0^{\circ}19'10''$  West 451.27 feet along a fence to said 10400 South right-of-way fence; thence South  $89^{\circ}48'23''$  West along the South line of said 10400 South, 861.10 feet to beginning.

Parcel No. 30:061:0008