

After Recording Return To:
Coleman Talley LLP
Attn: Harrison Coleman
3475 Lenox Road NE
Suite 400
Atlanta, Georgia 30326

APNs:
Parcel No. 34-508-0001
Parcel No. 34-508-0002
Parcel No. 34-508-0003
Parcel No. 67-090-0001

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COVER SHEET

Title of Document: CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

Date of Document: September 21, 2021

Trustor: MARINA INVESTMENTS, LLC, a Utah limited liability company

Trustor's Address: 22 E. 1500 South, American Fork, Utah, 84003.

Beneficiaries: AVATAR REIT I LLC, a Delaware limited liability company;
AVATAR CHABAD SOUTH HAMPTON LLC, a Delaware limited liability company

Beneficiary's Mailing Address: c/o Avatar Capital Finance, LLC
1200 Westlake Avenue N, Suite 1006
Seattle, WA 98109

Trustee/Mailing Address: BACKMAN TITLE SERVICES
1067 West Grand Avenue, Suite 103
Farmington, Utah 84025

Legal Description: See Exhibit A

Reference Book and Page(s): N/A

Deed of Trust
4813-6402-6875, v. 3

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

THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS SECURITY INSTRUMENT CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* §70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS SECURITY INSTRUMENT ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

This CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Security Instrument**") is effective as of September 21, 2021, by and between **MARINA INVESTMENTS, LLC**, a Utah limited liability company (the "**Trustor**") to **BACKMAN TITLE SERVICES**, as trustee ("**Trustee**"), for the benefit of **AVATAR REIT I LLC**, a Delaware limited liability company, ("**REIT**") and **AVATAR CHABAD SOUTH HAMPTON LLC**, a Delaware limited liability company, ("**Chabad**") as co-beneficiaries (REIT and Chabad collectively the "**Beneficiary**").

Trustor, in consideration of (i) the loan in the maximum principal amount of **EIGHT MILLION NINE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$8,950,000.00)** (the "**Loan**") evidenced by that certain Commercial Promissory Note dated as of the date of this Security Instrument, executed by Trustor and made payable to the order of REIT in the principal amount of **FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00)** (the "**5MM Note**") and that certain Commercial Promissory Note dated as of the date of this Security Instrument, executed by Trustor in favor of Chabad in the original principal amount of **THREE MILLION NINE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$3,950,000.00)** (the "**3MM Note**")

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(the 5MM Note and 3MM Note, each as amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively being hereinafter referred to as the “**Note**”), (ii) that certain Loan Agreement dated as of the date of this Security Instrument, executed by and between Trustor and Beneficiary (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), and (iii) the trust created by this Security Instrument, and to secure to Beneficiary the repayment of the Indebtedness (as defined in this Security Instrument), and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Trustor contained in the Loan Documents (as defined in the Loan Agreement), but specifically excluding the Environmental Indemnity Agreement (as defined in this Security Instrument), irrevocably and unconditionally GRANTS, BARGAINS AND SELLS, CONVEYS, TRANSFERS AND ASSIGNS to Trustee, in trust, for benefit of Beneficiary, with power of sale and with right of entry and possession, all estate, right, title and interest that Trustor now has or may later acquire in and to the Pledged Property (as defined in this Security Instrument), including those certain parcels of real property located in Utah County, State of Utah, and described in Exhibit A attached to this Security Instrument and incorporated by reference (collectively, the “**Land**”), to have and to hold such Pledged Property unto Trustee and Trustee’s successors and assigns, forever; Trustor hereby releasing, relinquishing and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction (as defined in this Security Instrument), if applicable.

Trustor represents and warrants that Trustor is lawfully seized of the Pledged Property and has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Pledged Property, and that the Pledged Property is not encumbered by any Lien (as defined in this Security Instrument) other than Permitted Encumbrances (as defined in this Security Instrument). Trustor covenants that Trustor will warrant and defend the title to the Pledged Property against all claims and demands other than Permitted Encumbrances.

Trustor, and by their acceptance hereof, each of Trustee and Beneficiary covenants and agrees as follows:

1. Defined Terms.

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. All terms used and not specifically defined herein, but which are otherwise defined by the UCC (as defined in this Security Instrument), shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Pledged Property, whether direct or indirect.

“**Enforcement Costs**” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred

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by Beneficiary as a result of any Event of Default under the Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or foreclosure) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“**Environmental Indemnity Agreement**” means that certain Environmental Indemnity Agreement dated as of the date of this Security Instrument, executed by Trustor to and for the benefit of Beneficiary, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity Agreement.

“**Event of Default**” has the meaning set forth in the Loan Agreement.

“**Fixtures**” means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

“**Goods**” means all of Trustor’s present and hereafter acquired right, title and interest in all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“**Imposition Deposits**” means deposits in an amount sufficient to accumulate with Beneficiary the entire sum required to pay the Impositions when due.

“**Impositions**” means

- (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Pledged Property;

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(b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Beneficiary may require under the Loan Agreement;

(c) Taxes; and

(d) amounts for other charges and expenses assessed against the Pledged Property which Beneficiary at any time reasonably deems necessary to protect the Pledged Property, to prevent the imposition of liens on the Pledged Property, or otherwise to protect Beneficiary's interests, all as reasonably determined from time to time by Beneficiary.

"Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

"Indebtedness" means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument or any other Loan Document (other than the Environmental Indemnity Agreement), including late charges, interest charged at the Default Rate, the Minimum Interest Fee (as such term is defined in the Note), and accrued interest as provided in the Loan Agreement and this Security Instrument, advances, costs and expenses to perform the obligations of Trustor or to protect the Pledged Property or the security of this Security Instrument, all other monetary obligations of Trustor under the Loan Documents (other than the Environmental Indemnity Agreement), including amounts due as a result of any indemnification obligations, any prepayment premiums, and any Enforcement Costs.

"Land" means the real property described in Exhibit A.

"Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Pledged Property, or any portion of the Pledged Property (including proprietary leases or occupancy agreements if Trustor is a cooperative housing corporation), and all modifications, extensions or renewals thereof.

"Lien" means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman's or mechanic's lien, or any lien of a Governmental Authority, including any lien in connection with the payment of utilities, or any other encumbrance.

"Pledged Property" means all of Trustor's present and hereafter acquired right, title and interest, if any, in and to all of the following:

(a) the Land;

(b) the Improvements;

(c) the Personalty;

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(d) current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(e) insurance policies relating to the Pledged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty, or any other part of the Pledged Property, whether or not Trustor obtained the insurance pursuant to Beneficiary's requirements;

(f) awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Personalty, or any other part of the Pledged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Pledged Property caused by governmental action that does not result in a Condemnation Action, or (3) the total or partial taking of the Land, the Improvements, the Personalty, or any other part of the Pledged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(g) contracts, options and other agreements for the sale of the Land, the Improvements, the Personalty, or any other part of the Pledged Property entered into by Trustor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(h) Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;

(i) earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Pledged Property, and all undisbursed proceeds of the Loan and, if Trustor is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(j) Imposition Deposits;

(k) refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

(l) tenant security deposits;

(m) names under or by which any of the above Pledged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Pledged Property;

(n) Collateral Accounts and all Collateral Account Funds;

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(o) products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(p) all of Trustor's right, title and interest in the oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Pledged Property and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized; and

(q) all water, water rights (including the Water Rights, as defined in this Security Instrument), and water stock.

"Permitted Encumbrance" means only the easements, restrictions and other matters listed in a schedule of exceptions to coverage in the Title Policy and Taxes for the current tax year that are not yet due and payable.

"Personalty" means all of Trustor's present and hereafter acquired right, title and interest in all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

"Property Jurisdiction" means the jurisdiction in which the Land is located.

"Rents" means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any "Housing Assistance Payments Contract" or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Pledged Property, whether now due, past due, or to become due, and tenant security deposits.

"Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

"Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public

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authority, and which, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

"Title Policy" has the meaning set forth in the Loan Agreement.

"UCC" means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

"UCC Collateral" means any or all of that portion of the Pledged Property in which a security interest may be granted under the UCC and in which Trustor has any present or hereafter acquired right, title or interest.

"Water Rights" means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

2. Security Agreement; Fixture Filing.

(a) To secure to Beneficiary, the repayment of the Indebtedness, and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Trustor contained in the Loan Documents, Trustor hereby pledges, assigns, and grants to Beneficiary a continuing security interest in the UCC Collateral. This Security Instrument constitutes a security agreement and a financing statement under the UCC covering all such property. This Security Instrument also constitutes a financing statement pursuant to the terms of the UCC with respect to any part of the Pledged Property that is or may become a Fixture under applicable law, and will be recorded as a "fixture filing" in accordance with the UCC. Trustor hereby authorizes Beneficiary to file financing statements, continuation statements and financing statement amendments in such form as Beneficiary may require to perfect or continue the

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perfection of this security interest without the signature of Trustor. If an Event of Default has occurred and is continuing, Beneficiary shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Security Instrument and in any Loan Document. Beneficiary may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Beneficiary's other remedies. For purposes of the UCC, the debtor is Trustor and the secured party is Beneficiary. The name and address of the debtor and secured party are set forth after Trustor's signature below which are the addresses from which information on the security interest may be obtained.

(b) Trustor represents and warrants that: (1) Trustor maintains its chief executive office at the location set forth after Trustor's signature below, and Trustor will notify Beneficiary in writing of any change in its chief executive office within five (5) days of such change; (2) Trustor is the record owner of the Pledged Property; (3) Trustor's state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Security Instrument; (4) Trustor's exact legal name is as set forth on Page 1 of this Security Instrument; (5) Trustor's organizational identification number, if applicable, is as set forth after Trustor's signature below; (6) Trustor is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; (7) except as expressly provided in the Loan Agreement, the UCC Collateral will not be removed from the Pledged Property without the consent of Beneficiary; and (8) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto.

(c) All property of every kind acquired by Trustor after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Trustor and without further conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Trustor shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Beneficiary shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

3. Assignment of Leases and Rents; Appointment of Receiver; Beneficiary in Possession.

Except as limited by the Utah Uniform Assignment of Rents Act, Utah Code Annotated §§ 57-26-101 *et seq.*, and the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated §§ 78B-21-101 *et seq.*, Trustor agrees as follows:

(a) As part of the consideration for the Indebtedness, Trustor absolutely and unconditionally assigns and transfers to Beneficiary all Leases and Rents. It is the intention of Trustor to establish present, absolute and irrevocable transfers and assignments to Beneficiary of all Leases and Rents and to authorize and empower Beneficiary to collect and receive all Rents without the necessity of further action on the part of Trustor. Trustor and Beneficiary intend the

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assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Pledged Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Pledged Property, and it is the intention of Trustor, in such circumstance, that this Security Instrument create and perfect a lien on each of the Leases and Rents in favor of Beneficiary, which liens shall be effective as of the date of this Security Instrument.

(b) Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in the Loan Documents, Trustor shall have a revocable license to exercise all rights, power and authority granted to Trustor under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into new Leases, subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Beneficiary, and to apply all Rents to pay the Monthly Debt Service Payments and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Pledged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Trustor free and clear of, and released from, Beneficiary's rights with respect to Rents under this Security Instrument.

(c) If an Event of Default has occurred and is continuing, without the necessity of Beneficiary entering upon and taking and maintaining control of the Pledged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Trustor pursuant to Section 3(b) shall automatically terminate, and Beneficiary shall immediately have all rights, powers and authority granted to Trustor under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Beneficiary shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of an Event of Default, Trustor authorizes Beneficiary to collect, sue for and compromise Rents and directs each tenant of the Pledged Property to pay all Rents to, or as directed by, Beneficiary, and Trustor shall, upon Trustor's receipt of any Rents from any sources, pay the total amount of such receipts to Beneficiary. Although the foregoing rights of Beneficiary are self-effecting, at any time during the continuance of an Event of Default, Beneficiary may make demand for all Rents, and Beneficiary may give, and Trustor hereby irrevocably authorizes Beneficiary to give, notice to all tenants of the Pledged Property instructing them to pay all Rents to Beneficiary. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Trustor any amounts that are actually paid to Beneficiary in

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response to such a notice. Any such notice by Beneficiary shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit.

(d) If an Event of Default has occurred and is continuing, Beneficiary may, regardless of the adequacy of Beneficiary's security or the solvency of Trustor, and even in the absence of waste, enter upon, take and maintain full control of the Pledged Property, and may exclude Trustor and its agents and employees therefrom, in order to perform all acts that Beneficiary, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Pledged Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Beneficiary's election), the making of repairs to the Pledged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Pledged Property, for the purposes of enforcing this assignment of Rents, protecting the Pledged Property or the security of this Security Instrument and the Loan, or for such other purposes as Beneficiary in its discretion may deem necessary or desirable.

(e) Notwithstanding any other right provided Beneficiary under this Security Instrument or any other Loan Document, if an Event of Default has occurred and is continuing, and regardless of the adequacy of Beneficiary's security or Trustor's solvency, and without the necessity of giving prior notice (oral or written) to Trustor, Beneficiary may apply to any court having jurisdiction for the appointment of a receiver for the Pledged Property to take any or all of the actions set forth in Section 3. If Beneficiary elects to seek the appointment of a receiver for the Pledged Property at any time after an Event of Default has occurred and is continuing, Trustor, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Trustor consents to shortened time consideration of a motion to appoint a receiver. Beneficiary or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Pledged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Beneficiary's entry upon and taking possession and control of the Pledged Property, possession of the Pledged Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Pledged Property, and all security deposits and prepaid Rents, shall be surrendered to Beneficiary or the receiver, as applicable. If Beneficiary or receiver takes possession and control of the Pledged Property, Beneficiary or receiver may exclude Trustor and its representatives from the Pledged Property.

(f) The acceptance by Beneficiary of the assignments of the Leases and Rents pursuant to this Section 3 shall not at any time or in any event obligate Beneficiary to take any action under any Loan Document or to expend any money or to incur any expense. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Pledged Property. Prior to Beneficiary's actual entry upon and taking possession and control of the Land and Improvements, Beneficiary shall not be:

- (1) obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);

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(2) obligated to appear in or defend any action or proceeding relating to any Lease or the Pledged Property; or

(3) responsible for the operation, control, care, management or repair of the Pledged Property or any portion of the Pledged Property.

The execution of this Security Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Pledged Property is and shall be that of Trustor, prior to such actual entry and taking possession and control by Beneficiary of the Land and Improvements.

(g) Beneficiary shall be liable to account only to Trustor and only for Rents actually received by Beneficiary. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Pledged Property by reason of any act or omission of Beneficiary under this Section 3, and Trustor hereby releases and discharges Beneficiary from any such liability to the fullest extent permitted by law, provided that Beneficiary shall not be released from liability that occurs as a result of Beneficiary's gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. If the Rents are not sufficient to meet the costs of taking control of and managing the Pledged Property and collecting the Rents, any funds expended by Beneficiary for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Pledged Property by Beneficiary or the receiver, and any application of Rents as provided in this Security Instrument, shall not cure or waive any Event of Default or invalidate any other right or remedy of Beneficiary under applicable law or provided for in this Security Instrument or any Loan Document.

4. Protection of Beneficiary's Security.

If Trustor fails to perform any of its obligations under this Security Instrument or any other Loan Document, or any action or proceeding is commenced that purports to affect the Pledged Property, Beneficiary's security, rights or interests under this Security Instrument or any Loan Document (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a debtor or decedent), Beneficiary may, at its option, make such appearances, disburse or pay such sums and take such actions, whether before or after an Event of Default or whether directly or to any receiver for the Pledged Property, as Beneficiary reasonably deems necessary to perform such obligations of Trustor and to protect the Pledged Property or Beneficiary's security, rights or interests in the Pledged Property or the Loan, including:

(a) paying reasonable fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants;

(b) entering upon the Pledged Property to make repairs or secure the Pledged Property;

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- (c) obtaining (or force-placing) the insurance required by the Loan Documents; and
- (d) paying any amounts required under any of the Loan Documents that Trustor has failed to pay.

Any amounts so disbursed or paid by Beneficiary shall be added to, and become part of, the principal balance of the Indebtedness, be immediately due and payable and bear interest at the Default Rate from the date of disbursement until fully paid. The provisions of this Section 4 shall not be deemed to obligate or require Beneficiary to incur any expense or take any action.

5. Default; Acceleration; Remedies.

(a) If an Event of Default has occurred and is continuing, Beneficiary, at its option, may declare the Indebtedness to be immediately due and payable without further demand, and may either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Loan; (2) to foreclose this Security Instrument judicially or non-judicially by the power of sale granted herein; (3) to enforce or exercise any right under any Loan Document; and (4) to pursue any one (1) or more other remedies provided in this Security Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Security Instrument or any other Loan Document is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Trustor has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Trustor to acceleration and sale.

(b) The Trustee hereby lets the Pledged Property to Trustor until a sale is held under the foregoing provisions therefor, or until an Event of Default has occurred and is continuing, upon the following terms and conditions: Trustor, and every and all persons claiming or possessing such premises, and any part thereof, by, through or under Trustor, shall pay rent therefor during said term, payable upon demand, and shall and will surrender peaceable possession of the Pledged Property, and any and every part thereof, sold under the provisions of this Security Instrument, to the purchaser thereof under such sale, without notice or demand therefor, and shall and will at once, without notice, surrender up possession of the Pledged Property and every part thereof in the event Beneficiary shall take charge and enter as hereinbefore provided.

(c) In connection with the exercise of Beneficiary's rights and remedies under this Security Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: (1) all expenditures and expenses authorized by applicable law and all other expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (2) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed

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necessary or advisable by Beneficiary incurred in preparation for, contemplation of or in connection with the exercise of Beneficiary's rights and remedies under the Loan Documents; and (3) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Beneficiary's rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Beneficiary may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Pledged Property to bidders at any sale which may be held in connection with the exercise of Beneficiary's rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section 5, and such other expenses and fees as may be incurred in the protection of the Pledged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by Beneficiary in any litigation or proceedings affecting this Security Instrument, the Note, the other Loan Documents, or the Pledged Property, including bankruptcy proceedings, any foreclosure, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Trustor, with interest thereon at the Default Rate until paid.

(d) Any action taken by Trustee or Beneficiary pursuant to the provisions of this Section 5 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 5, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Security Instrument shall grant to Beneficiary (including Beneficiary acting as a mortgagee-in-possession), Trustee or a receiver appointed pursuant to the provisions of this Security Instrument any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law to the full extent permitted by law.

6. Notice.

All notices under this Security Instrument shall be given in accordance with the Loan Agreement. Beneficiary hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Pledged Property be mailed to it at the address set forth in preamble hereto.

7. Mortgagee-in-Possession.

Trustor acknowledges and agrees that the exercise by Beneficiary of any of the rights conferred in this Security Instrument shall not be construed to make Beneficiary a mortgagee-in-possession of the Pledged Property so long as Beneficiary has not itself entered into actual possession of the Land and Improvements.

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8. Release.

Upon payment in full of the Indebtedness, Beneficiary shall cause the release of this Security Instrument and Trustor shall pay Beneficiary's costs incurred in connection with such release.

9. Further Assurances for Trustee.

Trustor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Trustee may require from time to time in order to better assure, grant, and convey to Trustee the rights intended to be granted, now or in the future, to Trustee under this Security Instrument.

10. Successor Trustee.

Trustee may resign by giving notice of resignation in writing to Beneficiary. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, prefers to appoint a substitute trustee or multiple substitute trustees in accordance with the criteria described in *Utah Code Annotated* § 57-1-21, or successive substitute trustees or successive multiple substitute trustees, to act instead of the original Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees in succession) who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the then-existing Trustee. Such appointment shall be executed in accordance with Utah Code Annotated § 57-1-22 by any authorized agent of Beneficiary. Trustor hereby ratifies and confirms any and all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Security Instrument or the laws of the Property Jurisdiction. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of their duties, rights, and obligations hereunder.

For purposes of this Security Instrument the term "Trustee" means the person identified as Trustee in the first paragraph of this Security Instrument and any successor trustee appointed by Beneficiary pursuant to this Section 10 or otherwise appointed as permitted by law.

11. Governing Law; Consent to Jurisdiction and Venue.

This Security Instrument shall be governed by the laws of the Property Jurisdiction without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Trustor agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the Property Jurisdiction. The state and federal

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courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

12. Miscellaneous Provisions.

(a) This Security Instrument shall bind, and the rights granted by this Security Instrument shall benefit, the successors and assigns of Beneficiary. This Security Instrument shall bind, and the obligations granted by this Security Instrument shall inure to, any permitted successors and assigns of Trustor under the Loan Agreement. If more than one (1) person or entity signs this Security Instrument as Trustor, the obligations of such persons and entities shall be joint and several. The relationship between Beneficiary and Trustor shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Beneficiary and Trustor. No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

(b) The invalidity or unenforceability of any provision of this Security Instrument or any other Loan Document shall not affect the validity or enforceability of any other provision of this Security Instrument or of any other Loan Document, all of which shall remain in full force and effect. This Security Instrument contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by written agreement signed by the parties hereto.

(c) The following rules of construction shall apply to this Security Instrument:

(1) The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument.

(2) Any reference in this Security Instrument to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Security Instrument or to a Section or Article of this Security Instrument.

(3) Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(4) Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular.

(5) As used in this Security Instrument, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only, and not a limitation.

(6) Whenever Trustor’s knowledge is implicated in this Security Instrument or the phrase “to Trustor’s knowledge” or a similar phrase is used in this Security Instrument, Trustor’s knowledge or such phrase(s) shall be interpreted to mean to the best of Trustor’s knowledge after reasonable and diligent inquiry and investigation.

(7) Unless otherwise provided in this Security Instrument, if Beneficiary’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Beneficiary’s sole and absolute discretion.

(8) All references in this Security Instrument to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(9) “Beneficiary may” shall mean at Beneficiary’s discretion, but shall not be an obligation.

13. Time is of the Essence.

Trustor agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other Loan Documents, time is of the essence.

14. WAIVER OF TRIAL BY JURY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF TRUSTOR AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS TRUSTOR AND BENEFICIARY THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH OF TRUSTOR AND BENEFICIARY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

15. Water Rights.

(a) Trustor shall diligently comply with all deadlines affecting the Water Rights imposed by law or regulation or any Governmental Authorities, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 15, the term “Governmental Authorities” means the United States of America, the State of Utah, the Utah State Engineer or Utah

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Division of Water Rights, the County of Wasatch, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Security Instrument.

(b) Trustor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(c) Trustor shall promptly provide the Beneficiary with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(d) Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Beneficiary with evidence of each such payment.

(e) Trustor and its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

16. Utah Construction Registry.

(a) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor will cooperate with Beneficiary and any title insurer to cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Land in the State Construction Registry in accordance with Utah Code Annotated § 38-1a-201. Upon request from Beneficiary, Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Land that are included in the State Construction Registry and/or received by Trustor.

(b) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing or by Beneficiary's title insurer. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens*, or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Land or recorded against the Land.

(c) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer

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that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Annotated § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

(d) Trustor will cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Annotated § 38-1a-601, in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Land secured hereby, the address of the Land, and the County in which the Land is located.

(e) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Security Instrument shall be a valid and existing first priority lien on the Land free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2016 Form of ALTA Mortgagee's Title Insurance Policy.

(f) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Land (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Security Instrument and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected, if any, or that hereafter may be erected on the Land regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated § 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated § 38-1a-804 to release the Land from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(g) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release

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of the Land from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Annotated § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note and/or the Loan Agreement.

17. State Specific Provisions.

With respect to Pledged Property that is located in the State of Utah, the following state-specific provisions apply, notwithstanding anything contained herein to the contrary:

(a) Personal Property. It is the express understanding and intent of the parties that as to the UCC Collateral, Beneficiary, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Annotated § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Annotated § 57-1-30 or other applicable law.

(b) Deficiency. Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law. To the extent the Utah Deed of Trust Act, as now existing or hereafter amended, or other statute requires that the "fair market value" or "fair value" of the Pledged Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Indebtedness, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

(1) The Pledged Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure;

(2) An offset to the fair market value or fair value of the Pledged Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Pledged Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real Pledged Property; and

(3) Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

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(c) Reinstatement. If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Pledged Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Security Instrument, Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by Utah Code Annotated § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Security Instrument.

(d) Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Pledged Property or any part thereof, for the Indebtedness, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Pledged Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited against the Indebtedness. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default in accordance with the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated § 78B-21-101, Trustee or Beneficiary may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Pledged Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

(1) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in this Security Instrument, or specifically enforce any of the covenants hereof; and

(2) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in this Security Instrument, or specifically enforce any of the covenants hereof. Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Pledged Property to be sold in accordance with Utah Code Annotated § 57-1-24 or other applicable law. After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 through § 57-1-26 or other applicable law following the recordation of the notice of

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default, and notice of default and notice of sale having been given as then required by Utah Code Annotated §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Pledged Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the 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. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time 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; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a trustee's deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Pledged Property so sold, but without any covenant of 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.

(e) Obligations of Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Security Instrument shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor with respect to the Pledged Property.

(f) Status of the Pledged Property. For purposes of Utah Code Annotated § 57-1-25 and Utah Code Annotated § 78B-6-901.5, Trustor agrees that the stated purpose for which this Security Instrument was given is not to finance residential rental property.

(g) Waiver of Certain Rights. With respect to the Pledged Property (which Pledged Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor knowingly waives, for itself and all who may claim through or under Trustor, to the fullest extent permitted by applicable law: (i) any rights or benefits Trustor may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Annotated § 78B-6-901; (ii) the rights, protections and benefits afforded to Trustor under Utah Code Annotated § 57-1-32 and any successor or replacement statute or any similar laws or benefits; and (iii) any and all right to have the property and estates comprising the Pledged Property marshaled upon any foreclosure of the lien hereof.

(h) Amendments to Utah Code Annotated. In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Security Instrument, this Security Instrument shall, at the sole election of

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Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(i) Non-Agricultural Use. Trustor represents and warrants to Beneficiary that (a) the Pledged Property is not used principally for agricultural purposes, and (b) the Loan secured by this Security Instrument was not made primarily for personal, family or household purposes.

18. NOTICE RE ORAL AGREEMENTS.

PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument and incorporated fully herein by reference:

- | | | |
|-------------------------------------|-----------|--------------------------------------|
| <input checked="" type="checkbox"/> | Exhibit A | Description of the Land (required) |
| <input type="checkbox"/> | Exhibit B | Modifications to Security Instrument |

[Remainder of Page Intentionally Blank]

SIGNATURE PAGE TO CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

IN WITNESS WHEREOF, Trustor has signed and delivered this Security Instrument under seal (where applicable) or has caused this Security Instrument to be signed and delivered by its duly authorized representative under seal (where applicable). Where applicable law so provides, Trustor intends that this Security Instrument shall be deemed to be signed and delivered as a sealed instrument.

TRUSTOR:

MARINA INVESTMENTS, LLC,
a Utah limited liability company

By: *Ryan Robert Walz* (SEAL)
Name: RYAN ROBERT WALZ
Its: Manager

STATE OF UTAH)
)
COUNTY OF UTAH)

On this 21 day of September, 2021 before me personally appeared RYAN ROBERT WALZ, the Manager of **MARINA INVESTMENTS, LLC**, a Utah limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and Notarial Seal.

Brian Coleman
Notary Public
My Commission Expires: 8-11-25
[NOTARIAL SEAL]

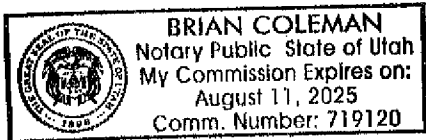


EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lots 1, 2, 3, Plat "A", Adams Boat Storage, American Fork, Utah County, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Lot 1 – Parcel No. 34-508-0001

Lot 2 – Parcel No. 34-508-0002

Lot 3 – Parcel No. 34-508-0003

Part of Lot 1, Plat "A", Marina Cove Boat Storage Subdivision, described as follows:
Commencing South 380.14 feet and West 2663.82 feet from Northeast corner of Section 35, Township 5 South, Range 1 East, Salt Lake Base & Meridian; thence South 88°42'7" East 853.77 feet; thence South 0°23'48" West 49.96 feet; thence South 89°6'30" East 34.2 feet; thence South 0°53'30" West 382.95 feet; thence West 250.94 feet; along a curve to the left (chord bears: North 85°32'59" West 42.41 feet; Radius=536 feet); thence North 87°49'0" West 258.12 feet; along a curve to the left (chord bears: North 88°44'29" West 17.31 feet, Radius=536 feet); thence North 89°40'0" West 312.99 feet; thence North 437.41 feet to the point of beginning.

Parcel No. 67-090-0001

Parcel 1A:

Together with a 36 foot wide access Easement as set forth on the recorded plat of Adams Boat Storage, Plat A, recorded May 25, 2012 as Entry No. 43873:2012.

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. Lien of taxes, not yet due and payable.
2. Easements, setbacks, notes, and restrictions, as shown on the subdivision plat:
 Recorded: May 25, 2012
 Entry No.: 43873:2012
 Book/Page: 34/508
3. Easements, setbacks, notes, and restrictions, as shown on the subdivision plat:
 Recorded: August 10, 2020
 Entry No.: 117142:2020
 Book/Page: 67/090
4. Any lease, rental, occupancy and/or sales agreements and the interests of parties claiming by, through and under any lease.
5. Trail Easement, and the terms and conditions thereof:
 Grantee: American Fork City, a Municipal Corporation
 Recorded: May 11, 2010
 Entry No.: 38542:2010
6. The terms and conditions of that certain Notice of Building Requirements:
 Recorded: April 25, 2012
 Entry No.: 33743:2012
7. Development Agreement, and the terms and conditions thereof:
 Between: American Fork City
 And: Ruben Adams
 Recorded: May 25, 2012
 Entry No.: 43874:2012
8. Easement, and the terms and conditions thereof:
 Grantee: American Fork City, a body politic
 Recorded: February 11, 2016
 Entry No.: 11568:2016
9. Storm Water Facility Agreement, and the terms and conditions thereof:
 Between: Marina Cove Storage
 And: American Fork City, a Municipal Corporation
 Dated: July 3, 2019

Deed of Trust

Recorded: August 14, 2019
Entry No.: 77426:2019

10. The terms and conditions of that certain Notice of Interest, High Groundwater Indemnification:

Recorded: August 14, 2019
Entry No.: 77427:2019

11. The terms and conditions of that certain Notice of Interest, Building Requirements, and Establishment of Restrictive Covenants:

Recorded: August 14, 2019
Entry No.: 77428:2019

Deed of Trust