

Comerica Bank

WHEN RECORDED, RETURN TO:

Comerica Bank  
Mail Code: 7578  
39200 W. Six Mile Road  
Livonia, MI 48152  
150952-CPF  
TAX ID: PP-52-F

01179413 B: 2712 P: 0175

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Rhonda Francis Summit County Recorder

12/10/2021 04:34:02 PM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.

Electronically Recorded

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

(Park City - Ford)

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") is made and entered into as of December 10, 2021, by KMAM REAL ESTATE LLC, a Utah limited liability company, whose address is 11453 South Lone Peak Parkway, Draper, Utah 84020 ("Trustor"), to Cottonwood Title Insurance Agency, Inc., whose address is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121 ("Trustee"), and in favor of Comerica Bank, whose address is 39200 Six Mile Road, Livornia, MI 48152-2689, Attn: Commercial Loan Documentation, Mail Code 7578 ("Beneficiary").

RECITALS

A. Trustor desires to obtain a loan from Beneficiary in the original principal amount of \$5,235,000 (the "Loan"), evidenced by that certain Installment Note of approximately even date herewith, executed by Trustor in favor of Beneficiary (as may be amended, extended, increased or renewed from time to time, the "Note").

B. Trustor is the owner of the fee simple interest in the real property located in the County of Summit, State of Utah, and more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Real Property").

C. As a condition precedent to Beneficiary extending the Loan, Beneficiary requires that Trustor execute and deliver this Deed of Trust in favor of Beneficiary for its benefit to secure the payment and performance in full when due of Trustor's obligations under the Note.

AGREEMENT

Trustor hereby irrevocably grants, transfers, conveys, warrants and assigns 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 fee, leasehold, or otherwise, in and to the Real Property.

Together with all buildings, fixtures, signs, and other improvements now or hereafter owned or acquired by Trustor and situated or to be constructed on the Real Property, and all rights and easements appurtenant thereto (the "Improvements").

Together with all of Trustor's right, title and interest in and to personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy, or enjoyment of the Real Property or the Improvements, including, without limitation, all accounts, documents, instruments, chattel paper, furniture, appliances, equipment, fixtures, general intangibles, deposit accounts, electronic chattel paper, goods, investment property and inventory (as those terms are defined in the Uniform Commercial Code as in effect from time to time in the State of Utah, or any other jurisdiction, as applicable), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, security deposits, utility deposits, refunds of fees, insurance premiums, deposits paid to any governmental authority, letters of credit, insurance policies, insurance proceeds, taking proceeds, and escrowed funds together with all present and future attachments, accretions, accessions, replacements, and additions thereto and products and proceeds thereof (collectively, the "Personal Property").

Together with all waters and water rights on, relating, or appertaining thereto; all easements, licenses and rights of way relating or appertaining thereto; all rents, issues, royalties, income and profits appertaining thereto; all awards made for taking by eminent domain or any proceeding or purchase in lieu thereof; the proceeds of any insurance with regard thereto; all tenements, hereditaments, rights, privileges, and appurtenances belonging or relating thereto or any improvements thereon; and including any of the foregoing now existing or created or arising in the future (collectively, with the Real Property, the Improvements, the Leases and the Personal Property, the "Property").

Trustor further agrees, represents, and covenants as follows:

1. Obligations Secured. This Deed of Trust secures the following debts, obligations, and liabilities to Beneficiary: (a) all obligations of Trustor arising from or relating to the Note, (b) all obligations of Trustor under the Note which arise after the Note is extended, renewed, modified or amended pursuant to any written agreement between Trustor and Beneficiary, and all obligations of Trustor under any successor agreement or instrument which restates and supersedes the Note in its entirety; (c) the obligations of Trustor under or in connection with this Deed of Trust (but excluding those obligations expressly excluded pursuant to Section 8 Hazardous Materials), and (d) transactions in which the documents evidencing the indebtedness refer to this grant of security interest as providing security therefor.

2. Representations and Warranties. Trustor represents and warrants to Trustee and Beneficiary that:

a. Trustor is the owner of fee simple title in and to the Real Property and has good marketable title in and to the Real Property.

b. The Real Property is free and clear of any liens, claims, encumbrances, restrictions, encroachments and interests whatsoever in favor of any third party, except (1) current taxes and assessments which are not yet due and payable, (2) rights of way,

easements, and licenses which are recorded and of public record, and (3) matters approved by Beneficiary in writing as title exceptions (collectively, the “Permitted Exceptions”).

c. There are no outstanding options to purchase or rights of first refusal with respect to all or any portion of or any interest in the Property.

d. This Deed of Trust is and shall remain a valid and enforceable first lien on the Property subject only to the Permitted Exceptions.

e. The Real Property has been legally subdivided and is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Real Property or any portion thereof.

f. Trustor and the Property, and the use and operation thereof, comply in all material respects with applicable laws, rules, ordinances, and regulations, including, without limitation, building and zoning ordinances and codes and the Americans with Disabilities Act, as amended and now in effect. Trustor is not in default or violation of any order, writ, injunction, decree or demand of any governmental authority or agency, and Trustor has not received written notice of any such default or violation. There has not been committed by Trustor or, to Trustor’s knowledge, any other person or entity in occupancy of or involved with the operation or use of the Property, any act or omission affording any such governmental authority or agency the right of forfeiture as against the Property, or any part thereof, or any monies paid in performance of Trustor’s obligations under the Note.

g. No condemnation or similar proceeding has been commenced or, to Trustor’s knowledge, is threatened or contemplated with respect to all or any portion of the Real Property or for the relocation of roadways providing access to the Real Property.

3. Maintenance and Preservation of Property. Trustor shall (a) maintain the Property in good condition and repair, ordinary wear and tear excepted; (b) not commit or allow any waste of the Real Property; (c) complete promptly and in good and workmanlike manner any Improvement which may be constructed on the Real Property; (d) except to the extent that insurance proceeds are applied by Beneficiary to the satisfaction of the obligations secured by this Deed of Trust, restore promptly and in good and workmanlike manner any of the Property which may be damaged or destroyed; (e) comply at all times with all material laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Property; (f) not commit or allow any act upon the Real Property in violation of law; and (g) do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the Property.

Trustor shall not remodel, remove or modify any Improvements upon the Property except (a) in the ordinary course of Trustor’s business and on the condition that such action will not reduce or impair the fair market value or utility of the Property, or (b) with the prior written consent of Beneficiary.

4. Insurance. Trustor shall secure and at all times maintain, at Trustor's expense, any insurance coverages as reasonably required by Beneficiary. In the event of any loss or damage to the Property, Trustor shall immediately give Beneficiary written notice thereof.

5. Taxes and Assessments. Trustor shall pay when due all taxes, assessments, and governmental charges and levies on the Property, except such as are being contested in good faith by proper proceedings and as to which adequate reserves are maintained.

6. Utilities. Trustor shall pay when due all utility charges for gas, electricity, water, sewer, garbage collection, or other services provided to the Real Property.

7. Mechanic's and Materialmen's Liens.

a. Trustor shall timely comply with all requirements of Utah Code Ann. § 38-1a-101 et seq. with regard to filings and notices. Trustor shall provide to Beneficiary copies of all notices related to mechanics or materialmen liens filed by any party with respect to the Property.

b. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (except Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust 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 or improvements now being erected or that hereafter may be erected on the Real Property regardless of by whom such services, labor or materials may have been contracted unless otherwise authorized in writing by Lender.

c. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge to the extent required in Section 7(b) above, 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 of the Property from the effect of such lien, encumbrance or charge. 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, plus costs and attorneys fees.

8. Hazardous Materials. "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, and as the term may be defined by any contemporary state counterpart to such act; (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, and as the term may be defined by any contemporary state counterpart of such act; (c) asbestos; (d) polychlorinated biphenyls; (e) underground or above ground 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 substance which under any federal, state, or local law, ordinance, rule, or regulation requires special handling or notification in its collection, storage, treatment, transportation, use or disposal.

“Environmental Condition” means any condition involving or relating to Hazardous Materials and/or the environment affecting the Property, whether or not yet discovered, which could or does result in any damage, loss, cost, expense, claim, demand, order, or liability to or against Trustor or Beneficiary by any third party (including, without limitation, any government entity), including, without limitation, any condition involving or relating to Hazardous Materials affecting the Property resulting from the operation of Trustor’s business and/or operations and any activity or operation conducted by any third party in the vicinity of the Property.

“Environmental Health and Safety Law” means any legal requirement that requires or relates to (including, without limitation, the Utah Underground Storage Tank Act, *Utah Code* § 19-6-401 et seq.):

- a. advising appropriate authorities, employees, or the public of intended or actual releases of Hazardous Materials, violations of discharge limits or other prohibitions, and of the commencement of activities, such as resource extraction or construction, that do or could have significant impact on the environment;
- b. preventing or reducing to acceptable levels the release of Hazardous Materials into the environment;
- c. reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated;
- d. assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the environment when used or disposed of;
- e. protecting resources, species, or ecological amenities;
- f. use, storage, transportation, sale, or transfer of Hazardous Materials or other potentially harmful substances;
- g. cleaning up Hazardous Materials that have been released, preventing the threat of release, and/or paying the costs of such clean up or prevention; or
- h. making responsible parties pay for damages done to the health of others or the environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

Trustor represents and warrants that, to the best of Trustor’s knowledge no Hazardous Materials are now located on, in, or under the Property, nor is there any Environmental Condition on, in, or under the Property and, to the best of Trustor’s knowledge, neither Trustor nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, used, stored,

released, generated, located or disposed of on, in or under the Property, or any part thereof, nor caused or allowed an Environmental Condition to exist on, in or under the Property, which may have a material impact or effect upon the financial or other condition of Trustor or Trustor's operations. Trustor further represents and warrants that, to the best of Trustor's knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials and/or an Environmental Condition is proposed, threatened, anticipated or in existence with respect to the Property, which may have a material impact or effect upon the financial or other condition of Trustor or Trustor's operations.

Trustor will:

- a. Not permit the presence, use, disposal, storage or release of any Hazardous Materials on, in, or under the Property, except in the ordinary course of Trustor's business under conditions that are generally recognized to be appropriate and safe and that are in material compliance with all applicable Environmental Health and Safety Laws.
- b. Not permit any substance, activity or Environmental Condition on, in, under or affecting the Property which is in material violation of any Environmental Health and Safety Laws.
- c. Comply with the material provisions of all Environmental Health and Safety Laws.
- d. Promptly after learning of the same, notify Beneficiary of any material discharge of Hazardous Materials, Environmental Condition, or environmental complaint or notice received from any governmental agency or any other party.
- e. Upon any material discharge of Hazardous Materials or upon the occurrence or discovery of any material Environmental Condition, promptly address the same in material compliance with all Environmental Health and Safety Laws, promptly pursue any responsible third parties, promptly pay any fine or penalty assessed in connection therewith, or diligently contest in good faith, and promptly notify Beneficiary of such events and of the actions being taken by Trustor to address and remedy the same.
- f. From time to time upon request of Beneficiary, provide copies of all environmental inspections and reports in the possession of or available to Trustor concerning the Property.
- g. Permit Beneficiary, at Beneficiary's expense, to inspect the Property for Hazardous Materials and Environmental Conditions, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto. Any such testing shall be done without unreasonable disruption of Trustor's business and testing will be done only upon reasonable grounds or after an Event of Default.
- h. If there has been a material spill or discharge of a Hazardous Material on the Property, upon Beneficiary's request, and at Trustor's expense, provide a report (including all validated and unvalidated data generated for such reports) satisfactory to Beneficiary in scope, form, and content, and provide to Beneficiary such other and further

assurances reasonably satisfactory to Beneficiary, that Trustor is in compliance with these covenants concerning Hazardous Materials and Environmental Conditions, and that the violation thereof has been corrected in compliance with all applicable Environmental Health and Safety Laws. Beneficiary may also obtain an additional report from an independent environmental engineer selected by Beneficiary (the "Independent Report"). If the findings and conclusions in the Independent Report are materially different from those contained in the report provided by Trustor, all costs and expenses incurred with respect to the Independent Report shall be paid by Trustor. If the findings and conclusions contained in the Independent Report are substantially similar to those contained in the report provided by Trustor, then all costs and expenses incurred with respect to the Independent Report shall be paid by Beneficiary.

i. Promptly advise Beneficiary of any additional, supplemental, new, or other information concerning any Hazardous Materials or Environmental Conditions that could have a material adverse effect upon the value or marketability of the Property.

Trustor shall indemnify Beneficiary for any and all claims and liabilities, and for damages which may be awarded or incurred by Beneficiary, and for all reasonable attorneys' fees, legal expenses, and other out-of-pocket expenses, arising from or related in any manner, directly or indirectly, to (a) Hazardous Materials located on, in, or under the Property; (b) any Environmental Condition on, in, or under the Property; (c) violation of or non-compliance with any Environmental Health and Safety Law; (d) any breach or violation of the representations, warranties, and covenants contained in this Section 8 Hazardous Materials; and/or (e) any activity or omission, whether occurring on or off the Property, whether prior to or during the term of the obligations secured hereby, and whether by Trustor or any other person or entity, relating to Hazardous Materials or an Environmental Condition affecting the Property. The indemnification obligations of Trustor under this Section 8 Hazardous Materials shall survive any reconveyance, release, or foreclosure of this Deed of Trust, any transfer in lieu of foreclosure, and satisfaction of the obligations secured hereby.

Beneficiary shall have the sole and complete control of the defense of any such claims. Beneficiary is hereby authorized to settle or otherwise compromise any such claims as Beneficiary in good faith determines shall be in its best interests.

Notwithstanding anything to the contrary in this Deed of Trust, any indemnification amount owing to Beneficiary pursuant to this Section 8 Hazardous Materials shall not be secured by the Property.

9. Defense of Title. Trustor shall keep the Property free and clear of any liens (other than Permitted Exceptions) for the supplying of services, labor or materials, unless Trustor is diligently contesting the validity of such lien or taking other actions authorized by Section 7 Mechanic's and Materialmen's Liens. Trustor shall promptly discharge any lien, deed of trust, mortgage, or other encumbrance upon the Property which has or may have priority over or equality with this Deed of Trust. Upon request of Beneficiary, Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Property, or the rights or powers of Beneficiary or Trustee. Should Trustee or Beneficiary elect to appear in or defend any such action

or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorneys' fees and legal expenses, incurred by Trustee and/or Beneficiary.

10. Right to Perform for Trustor. Other than Permitted Exceptions, to the extent that such liens are not covered by the specific provisions of Section 7 Mechanic's and Materialmen's Liens, if not paid or discharged when due, and upon the failure by Trustor to pay or discharge within 30 days of its receipt of notice from Beneficiary of its intent to pay or discharge the same, Beneficiary may, in its sole discretion and without any duty to do so, (a) elect to discharge taxes, assessments, liens, deeds of trust, mortgages, or other encumbrances upon the Real Property which have or may have priority over or equality with this Deed of Trust, (b) perform any duty or obligation of Trustor, or (c) pay recording, insurance or other charges payable by Trustor or provide insurance if Trustor fails to do so. Any such payments advanced by Beneficiary shall be reimbursed by Trustor upon demand.

11. Further Assurance. Trustor shall execute and deliver such further instruments and documents and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out the purposes of this Deed of Trust and to subject to the lien and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Deed of Trust.

12. Attornment. All future lease agreements entered into by Trustor, as landlord, which pertain to the Real Property shall contain a covenant on the part of the tenant, enforceable by Beneficiary, obligating such tenant, upon request of Beneficiary, to attorn to and become a tenant of Beneficiary or any purchaser from Trustee or through foreclosure of this Deed of Trust, for the unexpired term of, and subject to the terms and conditions of, such future lease agreements.

13. Condemnation Awards. If the Real Property, the Improvements thereon, or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled to all of Trustor's rights in and to compensation, awards, and other payments and relief therefor, and shall be entitled, at Beneficiary's option, to commence, appear in, and prosecute in Beneficiary's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvement. All such compensation, awards, and other payments and relief are hereby assigned to Beneficiary.

After deducting all costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by Beneficiary in connection with such compensation, awards, and other payments and relief, Beneficiary may, in its sole discretion and without any duty to do so, release such compensation or apply such compensation, or any portion thereof, on any of the obligations secured by this Deed of Trust, whether or not then due. Beneficiary shall have no obligation to apply such compensation to restore or repair damage to the Property, regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Property.

14. No Further Encumbrances. Other than Permitted Exceptions, Trustor shall not further encumber, mortgage or place any lien upon the Property, nor cause or allow by operation of law the encumbrance of the Property without the written consent of Beneficiary, even though such encumbrance may be junior to this Deed of Trust.



15. Evidence of Title. Trustor shall deliver to, pay for and maintain policies of title insurance and any supplements, modifications and endorsements thereof, in a form, amount and from an insurer acceptable to Beneficiary.

16. Access. Beneficiary and Beneficiary's representatives are hereby authorized and shall have the right during the existence of this Deed of Trust, to enter upon the Property to inspect the Property and to perform any of the acts authorized under this Deed of Trust.

17. Assignment of Rents. As additional security for the payment of the Indebtedness, Borrower hereby assigns, transfers, and sets over to Lender: (i) the rents, profits, and income derived from the Property including all prepaid rent and security deposits (the "Rents"); (ii) the Leases, all guaranties of any lessee's obligations under the Leases, and any modifications or renewals of the Leases and such guaranties; (iii) any award or other payment to which Borrower may become entitled with respect to the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving the tenants under the Leases; and (iv) all payments made by or on behalf of any tenant of any part of the Property in lieu of Rent. Without limiting the foregoing, the term "**Leases**" shall include, among other Leases, that certain Lease Agreement dated November 2, 2021 (the "**Ford Lease**") between Borrower and M & M Automotive Park City, LLC, dba Karl Malone Ford Park City, a Utah limited liability company (the "**Ford Lessee**") and the term "**Rents**" shall include all lease and other payments owing to Borrower under and pursuant to the Ford Lease. Reference is made to that Subordination, Attornment and Non-Disturbance Agreement dated as of the date hereof, given by the Ford Lessee to Lender, and recorded in the real property records of Summit County, Utah.

a. License to Collect. Borrower reserves and Lender grants to Borrower a license to collect the Rents. If an Event of Default occurs, Lender may terminate such license without regard to the adequacy of its security hereunder and without notice to or demand upon Borrower, and shall thereafter have full and complete right and authority to demand, collect, receive, and receipt for the Rents, to take possession of the Property without having a receiver appointed, to rent and manage the Property from time to time, and to apply the net proceeds of the Rents to the Indebtedness until all delinquencies, advances, and the Indebtedness are paid in full or until Lender obtains title to the Property through foreclosure or otherwise. Borrower hereby irrevocably authorizes and directs the lessees under the Leases, upon receipt of notice from Lender that an Event of Default has occurred, to pay thereafter all Rents directly to Lender, for the benefit of the Lenders. Upon the occurrence of an Event of Default, Lender may enforce its rights to the Rents by any appropriate civil suit or proceeding.

b. Mortgagee in Possession. Neither the foregoing assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies hereunder shall be deemed to make Lender, a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property, unless and until Lender, in person or by agent, obtains title to the Property. The appointment of a receiver for the Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Property by such receiver, shall not be deemed to make Lender a mortgagee-in-possession or

otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

c. Further Assignments. Borrower shall not execute any further assignment of the Rents or suffer or permit any such assignment to occur by operation of law. Borrower shall at any time or from time to time, upon request of Lender, transfer and assign to Lender, in such form as may be satisfactory to Lender, Borrower's interest in the Rents or in any Lease, subject to and upon the condition, however, that prior to the occurrence of any Event of Default hereunder Borrower shall have a license to collect and receive all Rents under such Leases as set forth in this Section.

d. Representations and Covenants Regarding the Leases. Borrower covenants, represents and warrants that (a) Borrower has full right and title to assign their interest in the Leases and the Rents; (b) the Leases are or when executed will be valid, in full force and effect, and have not been modified or amended except as stated herein; (c) there is no outstanding assignment or pledge of Borrower's interest in the Leases or of the Rents; (d) no Rents have been or will hereafter be collected more than one month in advance; (e) the interest of all lessees under the Leases is and will be as lessee only, with no options to purchase or rights of first refusal; (f) each Lease shall provide for the attornment of the lessee thereunder to any person succeeding to Borrower's interest as the result of any foreclosure or transfer in lieu of foreclosure hereunder, said provision to be in form and substance approved by Lender; and (g) Lender shall be deemed to be the creditor of each lessee with respect to any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).

18. Security Agreement; Financing Statements. Trustor hereby grants to Beneficiary a security interest in the Personal Property, wherever located, now owned or existing or hereafter acquired or created. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code. Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Uniform Commercial Code.

Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9 of the Uniform Commercial Code, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (2) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any

Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Trustor hereby authorizes Beneficiary to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9-509(d)(2) of the Uniform Commercial Code. Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

Trustor represents and warrants to Beneficiary as follows: (i) Trustor's exact legal name is as indicated in the introductory paragraph hereof and on the signature page hereof, (ii) Trustor is an organization of the type, and is organized in the jurisdiction set forth in the introductory paragraph hereof, and (iii) the address listed in the introductory paragraph hereof accurately sets forth Trustor's place of business or, if more than one, its chief executive office, as well as Trustor's mailing address, if different. Trustor covenants with Beneficiary as follows: (A) without providing at least 30 days' prior written notice to Beneficiary, Trustor will not change its name, its place of business or, if more than one, chief executive office, or its mailing, and (B) Trustor will not change its type of organization, jurisdiction of organization or other legal structure.

This Deed of Trust shall constitute a financing statement pursuant to *Utah Code* § 70a-9-502(b), and shall be filed as a fixture filing in the Official Records of the County Recorder of the County in which the Property is located and covers goods which are or are to become fixtures on the Property.

19. Default. Time is of the essence of this Deed of Trust. The occurrence of any one of the following shall constitute an event of default hereunder (an "Event of Default"):

- a. Any representation or warranty made by or on behalf of Trustor in this Deed of Trust is materially false or materially misleading when made;
- b. Trustor fails in the payment or performance of any obligation, covenant, agreement or liability created by or contemplated by this Deed of Trust or secured by this Deed of Trust; or
- c. A Default (as defined in the Note) occurs.

No course of dealing or any delay or failure to assert any Event of Default shall constitute a waiver of that Event of Default or of any prior or subsequent Event of Default.

20. Notice of Default. Upon the occurrence of an Event of Default, Beneficiary may elect to have the Property sold in the manner provided herein and under applicable law. Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations secured hereby. Trustee shall file such notice for record in the office of the county recorder of the county where the Property is located. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with applicable law.

21. **Sale by Trustee Pursuant to Power of Sale.** After the lapse of such time as may then be required by *Utah Code* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code* §§ 57-1-24 and 57-1-25 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels in such order as Beneficiary may determine (but subject to any statutory right under *Utah Code* § 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 or on such other terms as are set forth in the notice 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. The postponement and notice of postponement shall be given as then required by law.

Beneficiary may bid at the sale and shall receive a credit on Beneficiary's bid up to the amount owing to Beneficiary secured by this Deed of Trust and as provided by law. Trustor agrees that (i) all default rate interest, late charges, prepayment premiums, breakage fees and other amounts owing under the Note, if any, in addition to amounts constituting principal and non-default interest, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary may add all such amounts to the principal balance of the Note, and in either case Beneficiary may include all such amounts in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Deed of Trust.

Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall constitute prima facie evidence of the truthfulness thereof and are conclusive evidence in favor of bona fide purchasers and encumbrances for value and without notice. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and costs and reasonable attorneys' fees and legal expenses actually incurred; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the same interest rate as the Note; (d) all obligations secured by this Deed of Trust; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court for the county in which the sale took place as provided by law. If the proceeds are deposited with the Clerk of the District Court, Trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. Upon depositing the balance and filing the affidavit, Trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court. Notwithstanding anything to the contrary in the foregoing, all procedures shall be conducted in compliance with applicable law.

In the event of any amendment to the provisions of *Utah Code* Title 57 or other provisions of *Utah Code* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of 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.

22. Surrender of Possession. If possession has not previously been surrendered by Trustor, Trustor shall surrender possession of the Property to the purchaser immediately after the Trustee's sale.

23. Foreclosure as a Mortgage. Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incidental thereto, including reasonable attorneys' fees and legal expenses, in such amounts as shall be fixed by the court.

24. Receiver. If an Event of Default occurs, Beneficiary shall have the right, without regard to the then value of the Property or the interest of Trustor therein, upon notice to Trustor, to apply to any court having jurisdiction to appoint a receiver of the Property. Trustor hereby irrevocably consents to such appointment and further consents to and approves Beneficiary as such receiver. Any such receiver shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Property or the foreclosure proceeding, unless the receivership is sooner terminated.

25. Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code* § 57-1-32 or other applicable law.

26. Reinstatement. If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three months of the recordation of a notice of default in accordance with *Utah Code* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code* § 57-1-31(2), as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

27. No Remedy Exclusive. The rights and remedies herein conferred are cumulative and not exclusive of any other rights and remedies and shall be in addition to every other right, power and remedy herein specifically granted or hereafter existing at law, in equity, or by statute which Trustee or Beneficiary might otherwise have, and any and all such rights and remedies may be exercised from time to time and as often and in such order as Trustee or Beneficiary may deem expedient. No delay or omission in the exercise of any such right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver thereof or of any Event of Default or to be an acquiescence therein.

28. Due on Sale. If Trustor shall either sell, convey or transfer the Property, or any part thereof, without the prior written consent of Beneficiary, or be divested of title in any manner except by proceedings in eminent domain, whether voluntarily or involuntarily, the obligations secured by this Deed of Trust shall, at the option of Beneficiary and without demand or notice, immediately accelerate and become due and payable in full. If Beneficiary exercises this option to accelerate, Beneficiary shall give Trustor written notice of such acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is given within which Trustor

may pay the sums declared due. If Trustor fails to pay such sums within such period, Trustor shall be in default and Beneficiary may exercise its remedies hereunder.

29. Intentionally Deleted.

30. Attorneys' Fees and Legal Expenses. In the event of default under this Deed of Trust, Trustor agrees to pay all reasonable attorneys' fees and legal expenses incurred by or on behalf of Trustee and/or Beneficiary in enforcement of this Deed of Trust, in exercising any rights and remedies arising from such Event of Default, or otherwise related to such Event of Default. Regardless of default, Trustor agrees to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by Trustee and/or Beneficiary in any bankruptcy proceedings in which Trustor is the debtor or the Property or any interest therein is property of the bankruptcy estate, including, without limitation, expenses incurred in modifying or lifting the automatic stay, assuming or rejecting leases, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

31. Indemnification. Trustor hereby agrees to indemnify Trustee and Beneficiary for all liabilities and damages (including contract, tort and equitable claims) which may be awarded against Trustee and Beneficiary, and for all reasonable attorneys' fees, legal expenses and other expenses incurred in defending such claims, arising from or relating in any manner to the negotiation, execution or performance by Trustee or Beneficiary of this Deed of Trust (including all reasonable attorneys' fees, legal expenses and other expenses incurred in defending any such claims brought by Trustor if Trustor does not prevail in such actions), other than for such liabilities and damages resulting from Trustee's or Beneficiary's gross negligence or willful misconduct and excluding only breach of contract by Trustee or Beneficiary. Trustee or Beneficiary shall have sole and complete control of the defense of any such claims and is hereby given authority to settle or otherwise compromise any such claims as Trustee or Beneficiary in good faith determines shall be in its best interests.

32. Notices. All notices or demands by any party hereto shall be in writing and shall be sent by certified mail, return receipt requested. Notices so mailed shall be deemed received two Banking Business Days after deposit in a United States post office box, postage prepaid, properly addressed to the mailing addresses set forth below or to such other addresses as Trustor, Trustee or Beneficiary may from time to time specify in writing. Any notice so addressed and otherwise delivered shall be deemed to be given upon the earlier of (i) two Banking Business Days after deposit in a United States post office box or (ii) when actually received by the addressee.

Trustor:

KMAM Real Estate LLC  
11453 South Lone Peak Parkway  
Draper, Utah 84020

Trustee:

Cottonwood Title Insurance Agency, Inc.  
1996 East 6400 South, Suite 120,

Salt Lake City, UT 84121

Attention: \_\_\_\_\_

**Beneficiary:**

Comerica Bank  
39200 Six Mile Road  
Livornia, Michigan 48152-2689  
Attention: Commercial Loan Documentation, Mail Code 7578

33. Actions by Trustee. At any time and from time to time upon written request of Beneficiary, payment of its fees and, in the case of full reconveyance, presentation of this Deed of Trust and the promissory note(s) secured hereby which are paid in full, without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) make a survey, map or plat of the Property; (b) join in granting any easement or creating any restriction on or relating to the Property; (c) join in any subordination or other agreement affecting this Deed of Trust which is authorized in writing by Beneficiary; and (d) reconvey, without warranty, all or any part of the Property upon written request of Beneficiary or as provided by law. 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 constitute prima facie evidence and are conclusive evidence in favor of bona fide purchasers and encumbrances for value and without notice. Trustor agrees to pay reasonable Trustee's fees, including reasonable attorneys' fees and legal expenses, for any of such services.

34. Substitution of Trustee. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county where the Property is situated, with a copy thereof being provided to the persons required by *Utah Code § 57-1-22* or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee and all other information required by *Utah Code § 57-1-22* or any successor statute.

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

36. Request for Notice. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address for Trustor provided in Section 32 Notices.

37. Revival Clause. If the incurring of any debt by Trustor or the payment of any money or transfer of property to Beneficiary by or on behalf of Trustor or any guarantor should for any

reason subsequently be determined to be “voidable” or “avoidable” in whole or in part within the meaning of any state or federal law (collectively “voidable transfers”), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary’s counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys’ fees of Beneficiary related thereto, the liability of Trustor and any guarantor, and each of them, and this Deed of Trust, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

38. Amendments; Waivers; Etc. This Deed of Trust cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in proper form for recording, signed by Trustor and Beneficiary.

39. General. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Utah.

All references in this Deed of Trust to the singular shall be deemed to include the plural and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context otherwise clearly requires a different interpretation.

All agreements, representations, warranties and covenants made by Trustor shall survive the execution and delivery of this Deed of Trust, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Beneficiary secured by this Deed of Trust is outstanding and unpaid. All agreements, representations, warranties and covenants in this Deed of Trust shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

[Signature Page(s) Follow]



IN WITNESS WHEREOF, this Deed of Trust has been executed the date and year first above written.

TRUSTOR:

KMAM REAL ESTATE LLC, a Utah limited liability company



By: Andrew C. Madsen, Manager

STATE OF UTAH )

COUNTY OF Summit )

ss.

The foregoing instrument was acknowledged before me this 10 day of December, 2021, by Andrew C. Madsen, the Manager of KMAM REAL ESTATE LLC, a Utah limited liability company, for and on behalf of said limited liability company.



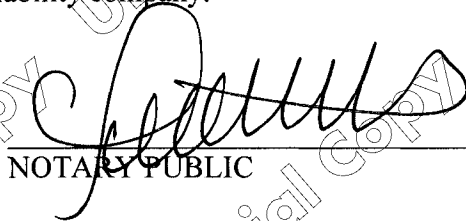
  
NOTARY PUBLIC

EXHIBIT A  
REAL PROPERTY

BEGINNING AT THE NORTHEAST CORNER STONE OF SECTION 13, T1S, R3E, SLB&M AND RUNNING THENCE SOUTH 89°55' WEST 1364.50 FEET ALONG THE NORTH LINE OF SAID SECTION TO AN EXISTING STEEL POST AND REBAR, THENCE SOUTH 01°18'08" EAST 701.92 FEET TO THE FLOWLINE OF A CREEK, THENCE ALONG SAID FLOWLINE THE FOLLOWING NINE COURSES; THENCE SOUTH 38°25'00" EAST 253.94 FEET, THENCE SOUTH 09°05'00" WEST 82.00 FEET, THENCE SOUTH 75°00'00" EAST 103.00 FEET, THENCE SOUTH 38°49'20" EAST 163.90 FEET, THENCE SOUTH 38°08'23" EAST 188.95 FEET, THENCE SOUTH 77°37'17" WEST 35.41 FEET, THENCE SOUTH 42°38'33" EAST 58.59 FEET, THENCE SOUTH 39°50'02" EAST 285.00 FEET, THENCE SOUTH 15°15'43" EAST 167.83 FEET, THENCE SOUTH 58°39'27" WEST 578.97 FEET TO AN EXISTING RE-BAR (WHICH IS 1.00 FOOT NORTHEASTERLY OF THE COUNTY ROAD RIGHT OF WAY FENCE), THENCE SOUTH 36°39'41" EAST 107.56 FEET TO AN EXISTING RIGHT OF WAY MARKER, THENCE SOUTH 36°06'08" EAST 191.34 FEET TO AN EXISTING RIGHT OF WAY MARKER, THENCE SOUTH 38°46'24" EAST 185.10 FEET TO AN EXISTING RIGHT OF WAY MARKER, THENCE SOUTH 39°18'02" EAST 87.85 FEET ALONG SAID RIGHT OF WAY LINE TO THE NORTHWEST CORNER OF QUIT CLAIM DEED RECORDED IN BOOK 218 AT PAGE 155 (SAID POINT ALSO BEING THE SAME AS THE NORTHWEST CORNER OF WARRANTY DEED RECORDED IN BOOK 96 AT PAGE 434), THENCE NORTH 68°59'27" EAST 894.85 FEET TO THE EAST LINE OF SAID SECTION, THENCE NORTH 00°58'17" WEST 2151.90 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING ANY PORTION LYING WEST OF THE WEST LINE OF THE EAST 1/2 OF THE EAST 1/2 OF SAID SECTION 13, T1S, R3E, SLB&M.

Parcel No. PP-52-F.