

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

2158 N Gilbert Road #111
Mesa, AZ 85203
Attention: Trent Erickson

22722978M
67131.0102
6002
800

ENT 126790 : 2022 PG 1 of 23
Andrea Allen
Utah County Recorder
2022 Dec 22 02:16 PM FEE 40.00 BY TM
RECORDED FOR Old Republic Title (South Jordan)
ELECTRONICALLY RECORDED

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

This DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (the "**Deed of Trust**") is made as of December 21, 2022, by and among Kurt Hendricks and Elise Hendricks ("**Trustors**"); Cottonwood Title ("**Trustee**") and Pinnacle Trustee Services LLC, a Utah limited liability company, as Trustee of Sparta Trust dated July 18, 2022 ("**Beneficiary**") Attention: Trent Erickson; with reference to the following facts:

A. Trustors and Beneficiary have entered into that certain Loan Agreement of even date herewith (the "**Loan Agreement**"), which provides for a loan by Beneficiary to Trustors to purchase the real property described below. All capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

B. Pursuant to the Loan Agreement, for value received Trustors has executed and delivered to Beneficiary that certain Promissory Note of even date herewith (the "**Note**").

C. Trustors has agreed to execute and deliver to Beneficiary this Deed of Trust as security (except as provided in **ARTICLE 3**) for performance of all of its obligations under, among other things, the Loan Agreement and the Note, as more particularly set forth below.

NOW, THEREFORE, in consideration of the premises, Trustors grants and agrees as follows:

**ARTICLE 1.
GRANTS; OBLIGATIONS SECURED**

1.1. Property. Trustors irrevocably GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, all of Trustors' present and future estate, right, title and interest in and to all of the following property, now owned or hereafter acquired (collectively the "**Property**");

1.1.1. Real Property. That certain real property (the "**Real Property**") described in **Exhibit A** attached hereto and incorporated by this reference, which property is owned by Trustors in fee.

1.1.2. Improvements. All present and future structures, buildings and improvements of any kind on the Real Property, and all machinery, equipment, appliances,

furnishings, fixtures and other property used or usable in connection with the Real Property or the improvements now or hereafter on the Real Property or any business conducted on the Real Property, now or hereafter attached or affixed in any manner to, installed in, or adapted to the use of, the Real Property or any improvement thereon, including heating and air-conditioning equipment and systems; facilities used to provide utility services, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services; window coverings, drapes and rods; and carpeting and floor coverings (all collectively the “*Improvements*”);

1.1.3. Appurtenances. All present and future appurtenances of the Real Property and rights of the Trustors in and to any streets, alleys, roads, navigable waters, air space, public places, easements or rights of way relating to the Real Property or Improvements;

1.1.4. Leases and Rents. All rights of the Trustors under all present and future leases, licenses, franchises, concessions, subleases, rental agreements and other agreements for possession, use or occupancy pertaining to any of the Property (subject, however, to the absolute assignment thereof set forth in the separate Assignment of Lessor’s Interest in Leases recorded herewith), and all of the rents, issues, royalties, profits, receipts, revenue and income (including security deposits) of any thereof or any of the Property (the “*Rents*”) (subject, however, to the absolute assignment of the Rents set forth in **ARTICLE 3**);

1.1.5. Water; Associations. All present and future water, water rights and water stock relating to any of the Property, and all present and future documents of membership in any owners’ or members’ association or similar group having responsibility for managing or operating any part of the Property;

1.1.6. Minerals. All present and future rights to all minerals, oil, gas and other hydrocarbon substances in, on or under the surface of the Real Property (to the extent owned by Trustors); and

1.1.7. Proceeds, Deposits. All proceeds, including insurance proceeds, and claims arising on account of any damage to or taking of any of the Property, and all causes of action and recoveries by settlement or otherwise for any loss or diminution in value of any of the Property; all present and future deposits and payments made by Trustors with third parties in connection with the development of and construction upon the Real Property, and refunds thereof; and all present and future deposits and payments made with or other security given to utility companies by Trustors with respect to the Real Property or Improvements, and refunds thereof

1.2. Collateral. Trustors, as debtor, hereby GRANTS a security interest to Beneficiary, as secured party, in all of Trustors’ present and future right, title and interest in and to all of the following property, now owned or hereafter acquired (collectively the “*Collateral*”):

1.2.1. Tangible Property. All goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies and equipment) which are now or hereafter installed on or attached or affixed to the Property, or which are used, necessary for use, or intended for use in connection with the Property (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property), whether or not

located or installed on or attached or affixed to the Property, including all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies and equipment) for providing gas, light, heat, water, air-conditioning, ventilation, shade, refrigeration, laundry, dry cleaning, food preparation, food service, dishwashing, garbage disposal, trash removal, fumigation, pest control, vacuuming, cleaning, window washing, telecommunications, computer, elevator, escalator, transportation, parking, safety, security, alarm, maintenance, landscaping, repair, decoration, recreation, entertainment or other utilities, services, facilities or guest, tenant, visitor or other accommodations of any kind at or for the Property;

1.2.2. Intangible Property. All intangible personal property, and all documentary, electronic and other evidences and embodiments of any intangible personal property, relating to the Property or the Collateral (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property or the Collateral), including: (a) all names under which or by which any of the Property or the Collateral may at any time be operated or known, all rights to carry on business under any such names or any variants of such names, and all goodwill in any way relating to the Property or the Collateral, (b) all permits, licenses, variances, land use entitlements, approvals, consents, authorizations, franchises and agreements, (c) all rights under any covenants, conditions and restrictions or other matters of record, (d) all contracts (including construction, materials, architectural, service, engineering, consulting, leasing, financing, sale, surety, operating, management, maintenance, repair and landscaping contracts), (e) all reserves, deferred payments, deposits, refunds, rebates, cost savings, letters of credit, rights to proceeds of letters of credit, and payments of any kind, (f) all disbursed proceeds of financing commitments, (g) all insurance policies (whether required by this Deed of Trust or otherwise) and insurance proceeds, (h) all claims, causes of action and recoveries by settlement or otherwise (including for any damage to, or loss, taking or diminution in the value of, any of the Property or the Collateral, or for any breach or rejection in bankruptcy of any other lease of any of the Property or Collateral by Trustors as lessee or lessor), (i) all interests of Trustors under any leases of any personal property of any kind, including any options to purchase, (j) all inventions, patents, trademarks, trade names, trade symbols, trade secrets, trade dress, service marks and copyrights, and all patent, trademark, trade name, trade symbol, trade secret, trade dress, service mark and copyright applications, registrations and licenses, and (k) all computer software and source codes;

1.2.3. Plans, Reports, Records, Documents. Without limiting the foregoing, all drawings, plans, specifications, tests, reports, studies, designs, data, appraisals, maps, surveys, engineering reports, promotional materials, business books and records, and other documents of any kind (in paper, electronic or other form) relating to the Property or the Collateral (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property or the Collateral);

1.2.4. Stock. Without limiting the foregoing, all shares of stock or other evidence of ownership of any part of the Property or the Collateral that is owned by Trustors in common with others, including any water stock relating to the Property, and all documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property or the Collateral;

1.2.5. Other. Without limiting the foregoing, all goods, accounts, documents, instruments, cash, money, deposit accounts, chattel paper, electronic chattel paper, securities, securities entitlements, investment property, letters of credit, letter of credit rights, rights to proceeds of letters of credit, payment intangibles, software and general intangibles, as those terms are or may be defined in the Utah Uniform Commercial Code from time to time in effect, in any way relating to or deriving from any of the Property, the Collateral or any business operated on any of the Property or using any of the Collateral (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property, the Collateral or any such business); and

1.2.6. Proceeds; Receipts and Revenues. All proceeds, replacements, substitutions, products, accessions, and increases (whether in the form of goods, accounts, documents, instruments, cash, money, deposit accounts, chattel paper, electronic chattel paper, securities, securities entitlements, investment property, letters of credit, letter of credit rights, rights to proceeds of letters of credit, payment intangibles, software and general intangibles or otherwise) of all of the Collateral; and all receipts, revenues, rents, issues and profits (whether in the form of goods, accounts, documents, instruments, cash, money, deposit accounts, chattel paper, electronic chattel paper, securities, securities entitlements, investment property, letters of credit, letter of credit rights, rights to proceeds of letters of credit, payment intangibles, software and general intangibles or otherwise) of operation, use, hiring, leasing or licensing of any of the Collateral.

1.3. Fixture Filing. The personal property in which Beneficiary has a security interest includes goods which are or will become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to the Utah Uniform Commercial Code (the "UCC"). Trustors is the "debtor"; Beneficiary is the "secured party"; and the addresses of each are as specified in the first paragraph of this Deed of Trust.

1.4. Security Agreement. Trustors (as Debtor), hereby grants and assigns to Beneficiary (as Secured Party), in order to secure full and timely payment of and performance of the Secured Obligations, a security interest in the Collateral. This Deed of Trust constitutes both a real property deed of trust and a security agreement pursuant to the UCC. Except as otherwise expressly provided in this Deed of Trust, all terms in this Deed of Trust relating to the Collateral and the grant of the foregoing security interest which are defined in the UCC but not in this Deed of Trust shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the UCC, as those meanings may be amended, revised or replaced from time to time. The parties intend that the terms used herein which are defined in the UCC shall have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date of this Deed of Trust, then such term, as used herein, shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this Deed of Trust, such amendment or holding shall be disregarded in defining terms used in this Deed of Trust.

1.5. Obligations Secured. The grants, assignments and transfers made in Sections 1.1 and 1.2 secure, in such order of priority as Beneficiary, in its absolute discretion, may determine, the due, prompt and complete payment, performance, observance and satisfaction by Trustors of

all of its obligations, covenants, agreements and conditions under all of the following (collectively, the “*Secured Obligations*”):

1.5.1. the Note, the Loan Agreement, this Deed of Trust and all other Loan Documents (as defined in the Loan Agreement);

1.5.2. all other instruments and agreements now or hereafter given to evidence or further secure any obligation secured hereby;

1.5.3. all other agreements to which Trustors (or the then owner of the Property) and Beneficiary may now or hereafter be or become parties which state that Trustors’ (or such owner’s) obligations under such agreements are secured by this Deed of Trust; and

1.5.4. all extensions, modifications, substitutions, replacements and renewals of any of the foregoing.

ARTICLE 2. COVENANTS OF TRUSTORS

TO PROTECT AND MAINTAIN THE SECURITY OF THIS DEED OF TRUST, TRUSTORS AGREES:

2.1. Payment and Performance of Obligations When Due. Trustors shall promptly pay when due all amounts due as part of the Secured Obligations and perform, observe and discharge every condition, obligation, covenant and agreement thereof.

2.2. Ownership, Maintenance and Preservation of Property and Collateral; Compliance with Law.

2.2.1. Trustors shall maintain and keep the Property and the Collateral in good condition and repair and shall not commit or permit waste or unreasonable depreciation of any part thereof. Except as otherwise provided in Loan Agreement; (a) Trustors shall not alter, remove or demolish any buildings, improvements, machinery, equipment, appliances or fixtures now or hereafter on the Property without Beneficiary’s prior written consent, except as may be required by law; and (b) Trustors shall not seek, make or consent to any change in the zoning, entitlements or conditions of use of the Property, without Beneficiary’s prior written consent.

2.2.2. Trustors shall promptly repair, replace or restore (in good, workmanlike manner and in compliance with all laws, ordinances, governmental rules and regulations, easements, agreements, covenants, conditions and restrictions affecting the Property) all buildings, improvements, machinery, equipment, appliances and fixtures now or hereafter on the Property, in the event of damage thereto or destruction thereof. Trustors shall promptly replace every part of the Collateral that may be damaged, destroyed, consumed, worn out, lost, or rendered obsolete or otherwise unfit for use in the operation of the Property, with other Collateral which shall be: (a) in good operating condition, with a value and utility at least equal to that of the replaced Collateral in usable condition and good repair; (b) owned by Trustors free and clear of all liens

and encumbrances; and (c) subject to Beneficiary's security interest hereunder, perfected and in first priority. Trustors shall promptly notify Beneficiary in the event of any damage to or loss of any material Collateral.

2.2.3. Trustors represents and warrants that it is, and as to portions of the Collateral to be acquired hereafter agrees that it will be, the sole owner of the Collateral, free from any adverse lien, security interest or other claim, other than the security interest granted hereby. Trustors represents and warrants that it has executed no financing statement covering any of the Collateral except in favor of Beneficiary, and that no financing statement covering any of the Collateral is on file in any public office in any jurisdiction. Without Beneficiary's prior written consent, Trustors will not execute, file or authorize to be filed, in any jurisdiction, any financing statement covering any of the Collateral in which Beneficiary is not named as the sole secured party. Trustors represents and warrants that there is no personal property of any type or description which is leased to Trustors and agrees and warrants that Trustors will not become the lessee of any personal property without Beneficiary's prior written consent.

2.2.4. All of the Collateral shall be and remain located on the Property, except as Beneficiary may consent in writing or as permitted pursuant to the Loan Agreement. Trustors shall not sell transfer, assign, remove or permit to be removed from the Property any of the Collateral unless: (a) such Collateral is inventory sold or is being repaired in the ordinary course of business and is promptly replenished with like Collateral of equivalent value in which Beneficiary has a first-priority security interest; or (b) Beneficiary has consented thereto in writing, and under such conditions as Beneficiary may reasonably impose; or (c) such Collateral is concurrently replaced with like Collateral of equivalent value and utility in which Beneficiary has a perfected first-priority security interest.

2.2.5. Trustors shall comply with and make all payments required under all laws, ordinances, regulations, covenants, conditions, restrictions and requirements of governmental authorities now or hereafter affecting the Property or the Collateral and shall not commit, suffer or allow any act to be done in violation thereof; subject, however, to Trustors' right of contest set forth in **Section 2.3.3**.

2.2.6. In the performance of all such acts and all other acts required by this Deed of Trust, Trustors shall promptly pay when due, at its own expense, all expenses incurred and shall promptly pay, discharge or otherwise satisfy all claims for labor performed and materials furnished in connection therewith.

2.3. Taxes and Assessments; Liens.

2.3.1. Payment. Trustors shall pay when due, without extension (and shall not enter into any extension of the due dates of): (a) all taxes, fees, impositions, and assessments which may become a lien against any of the Property or Collateral or any interest therein, (ii) all claims and demands arising from Trustors' ownership, development, construction, use or occupancy thereof, and (iii) all required payments in lieu of taxes. Trustors shall provide, at its expense, realty tax service until reconveyance of this Deed of Trust.

2.3.2. Protection of the Property. Trustors shall not permit any lien or security interest prior or equal to the lien and security interest of this Deed of Trust to be imposed upon or to exist against the Property or the Collateral, other than (a) the lien of taxes and assessments not delinquent, (b) any lien permitted under the provisions of **Section 2.3.3** and (c) liens or encumbrances otherwise permitted by the Loan Documents.

2.3.3. Trustors' Right to Contest. Trustors may withhold payment of any contested taxes, assessments, claims or demands, or contest any lien, if Trustors is diligently prosecuting its contest in good faith and in proper proceedings, so long as Beneficiary's interest in the Property and the Collateral is not jeopardized. If any part of the Property or the Collateral is subjected to a lien not discharged within twenty (20) days following Trustors' knowledge of such lien, Trustors shall deposit with Beneficiary cash in an amount adequate to provide for, or shall post a surety bond which causes, the discharge of the lien plus any interest, costs, attorneys' and experts' fees and costs or other charges that could accrue thereon. Beneficiary shall have the right to apply any such amounts on deposit to so discharge the lien at any time if necessary to prevent enforcement of such lien, or to prevent accrual of interest, attorneys' fees and costs or other charges thereon in excess of amounts on deposit, notwithstanding the pendency of any contest. In any contest Trustors shall defend itself and Beneficiary and shall satisfy any final adverse judgment before enforcement against the Property or the Collateral. Trustors shall name Beneficiary as an additional obligee under any surety bond furnished in the contest proceedings.

2.3.4. Evidence of Payment of Taxes or Assessments. Trustors shall upon demand furnish to Beneficiary evidence of payment of all taxes or assessments and shall authorize the appropriate governmental official to deliver to Beneficiary at any time a written statement of the taxes and assessments against the Property or the Collateral.

2.3.5. Subrogation. Beneficiary shall be subrogated to the lien of all encumbrances against the Property or the Collateral, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

2.4. Insurance.

2.4.1. Maintenance of Insurance. Trustors shall procure and maintain policies of insurance in form and content and from insurers acceptable to Beneficiary, providing such coverage as Beneficiary may require all in accordance with the requirements of the Loan Agreement. All such policies shall name Beneficiary as loss payee. Trustors shall deliver to Beneficiary certificates of coverage from each insurer containing a stipulation that coverage will not be canceled, diminished in scope or limits of coverage, allowed to lapse, surrendered or materially amended, without a minimum of thirty (30) days written notice to Beneficiary. All such policies shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of the policy notwithstanding any act or negligence of Trustors or any party holding under Trustors, and waiving all rights of setoff, counterclaim or deduction against Trustors. At least thirty (30) days prior to the expiration of each required policy, Trustors shall deliver to Beneficiary evidence satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy in compliance with the foregoing.

2.4.2. Trustors' Report on Insurance. Within sixty (60) days after the close of each of its fiscal years, Trustors shall furnish to Beneficiary a report on each existing policy of insurance showing (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) if applicable, the property insured, the then current replacement cost of the property and the manner of determining that cost; and (e) the expiration date of the policy. Trustors shall upon Beneficiary's request have the insurer's appraiser determine the replacement cost of the Property and the Collateral.

2.4.3. Insurance Proceeds.

(a) Trustors shall promptly notify Beneficiary of any material loss or damage to the Property or the Collateral or any material portion thereof. Trustors irrevocably authorizes Beneficiary, as Trustors' attorney-in-fact, with full power of substitution, at Beneficiary's election, to make proof of loss, adjust and compromise any claim under insurance policies, commence, appear in and prosecute any action arising from such policies, collect and receive insurance proceeds, and deduct therefrom Beneficiary's expenses incurred in the collection thereof, including reasonable attorneys' and experts' fees and costs, but Beneficiary shall not be responsible for any failure to collect any claim, proceeds or award for any reason.

(b) Trustors hereby absolutely and unconditionally assigns to Beneficiary all insurance proceeds which it may be entitled to receive, and all such proceeds shall be paid to Beneficiary to be disposed of in accordance with the following:

(1) Beneficiary may, in its sole discretion, elect to apply such insurance proceeds or any portion thereof to any one or more of the Secured Obligations, whether or not then due, in such order and to such installments thereof as Beneficiary may elect; and/or hold such insurance proceeds or any portion thereof in a non-interest-bearing account to be used for the cost of replacement, reconstruction, repair, or alteration of the Property or the Collateral (collectively "**Repair**"); and/or release such insurance proceeds or any portion thereof to Trustors.

(2) Notwithstanding the foregoing, Beneficiary shall permit use of such proceeds for Repair if Beneficiary determines that all of the following conditions are satisfied: (a) Trustors is not in default hereunder; (b) Beneficiary's security is not and will not be impaired; (c) income from the Property (or insurance for loss of such income) will be sufficient to pay all debt service and operating expenses of the Property during the Repair and thereafter; (d) the insurance required to be maintained hereunder will be available to Trustors during the Repair and thereafter; (e) Beneficiary has approved the plans and specifications for the Repair; (f) the Repair is, in Beneficiary's reasonable judgment, economically feasible, and can be accomplished prior to the required completion of any of the Improvements (if the Improvements have not yet been completed) or no later than sixty (60) days prior to the Maturity Date (as defined in the Note) if the Improvements have been completed; and (g) Trustors has deposited with Beneficiary, within five (5) days of demand by Beneficiary, any amount which Beneficiary determines to be necessary to effect the Repair in excess of insurance

proceeds available therefor. Insurance proceeds to be disbursed for Repair will be disbursed in accordance with such fund control procedures as Beneficiary may require. The receipt, application, use or release of insurance proceeds by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

2.4.4. Transfer of Policies. Upon any foreclosure under this Deed of Trust or other transfer of title to the Property and/or the Collateral in extinguishment of any portion of the Secured Obligations, all right, title and interest of Trustors in and to any insurance policy, unearned premiums thereon or proceeds thereof shall pass to the purchaser or grantee.

2.5. Impound. Upon an Event of Default, Trustors shall, upon demand by Beneficiary, maintain with Beneficiary or Beneficiary's designated agent an impound account (which, except to the extent otherwise required by law, shall be non-interest-bearing) for amounts to become due (based upon Beneficiary's reasonable estimate thereof from time to time) for any one or more of the following: property taxes, assessments, insurance premiums and any other charge or expense which, if unpaid, might give rise to a lien upon the Property or the Collateral or otherwise adversely affect Trustors' or Beneficiary's interests therein (collectively, the "**Charges**"). After any such demand by Beneficiary, Trustors shall pay to Beneficiary or Beneficiary's designated agent: (a) immediately, a ratable portion of the next-due amount of each of the Charges which corresponds to that portion of one year which, as of such demand, has elapsed since the date each of such Charges was last due; (b) on or before the first day of each calendar month thereafter, an amount equal to the next-due amount of each of the Charges less amounts deposited and available in the impound account therefor, divided by the number of months to elapse before one month prior to the next due date of each of the Charges; and (c) not later than thirty (30) days prior to the due date of each of the Charges, an amount equal to any excess of the next-due amount of each of the Charges over amounts deposited and available in the impound account therefor. If Beneficiary determines at any time that amounts theretofore paid into the impound account are less than a ratable portion of the next-due amount of the Charges corresponding to that portion of one year which, as of such determination, has elapsed since the date each of such Charges was last due, upon demand Trustors shall pay to Beneficiary or Beneficiary's designated agent the amount of such shortfall. All such amounts shall be held in the account for payment of the Charges when due.

2.6. Litigation; Attorneys' Fees.

2.6.1. Trustors shall promptly notify Beneficiary of the commencement or threat of commencement of any litigation which seeks to or could materially affect any of the Property or the Collateral, the lien or security interest of this Deed of Trust, or the rights or powers of Beneficiary or Trustee hereunder. Trustors shall, at its own expense, appear in and defend any such litigation. Beneficiary and Trustee shall also have the right, but not the obligation, to appear and participate in any such litigation, and Trustors shall pay all costs and expenses (including costs of evidence of title and attorneys' and experts' fees and costs) of Beneficiary and Trustee in so appearing.

2.6.2. Trustors shall immediately reimburse Beneficiary for all fees and costs, including attorneys' and experts' fees and costs, incurred by Beneficiary for: (a) enforcement of

any of the Secured Obligations, this Deed of Trust or any of its terms, or the exercise of any rights or remedies hereunder and/or at law, in equity or otherwise, whether or not any action or proceeding is filed; (b) representation of Beneficiary in any bankruptcy, insolvency, reorganization or other debtor-relief or similar proceeding of or relating to Trustors, to any person liable (by way of guaranty, assumption, endorsement or otherwise) upon any of the Secured Obligations, or to the Property or the Collateral; or (c) representation of Beneficiary in any action or proceeding relating to the Property or the Collateral, whether commenced by Beneficiary or any other person, including foreclosure, receivership, lien or stop-notice enforcement, bankruptcy, eminent domain and probate actions or proceedings. All such fees and costs shall bear interest until paid at the rate applicable under the Note.

2.7. Performance of Obligations by Beneficiary or Trustee. Should Trustors fail to make any payment, perform any obligation or do any act set forth in or secured by this Deed of Trust, Beneficiary or Trustee (at the request of Beneficiary), without obligation to do so, without notice to or demand upon Trustors and without releasing Trustors from making such payments, performing such obligations or doing such acts, then or in the future, may make such payment, perform such obligation or do such act in such manner and to such extent as Beneficiary or Trustee may deem necessary to protect the security of this Deed of Trust or the interests of Beneficiary or Trustee. Without limiting the foregoing, Beneficiary or Trustee may pay, purchase, contest or compromise any encumbrance, charge or lien which, in the sole judgment of Beneficiary or Trustee, appears to be prior or superior to this Deed of Trust. In exercising any such power, Beneficiary or Trustee may pay all necessary expenses incurred therefor including reasonable attorneys' and experts' fees and costs. Trustors shall pay, immediately and without demand, all sums so expended by Beneficiary or Trustee, with interest, from the date of expenditure, at the rate applicable under the Note.

2.8. Condemnation.

2.8.1. Trustors shall promptly notify Beneficiary of any pending or threatened action to condemn or take under eminent domain any of the Property or the Collateral. Trustors irrevocably authorizes Beneficiary, as Trustors' attorney-in-fact, with full power of substitution, at Beneficiary's election, to make claim for compensation, adjust and compromise any claim, commence, appear in and prosecute any action arising from such condemnation, collect and receive condemnation awards, and deduct therefrom Beneficiary's expenses incurred in the collection thereof, including reasonable attorneys' and experts' fees and costs, but Beneficiary shall not be responsible for any failure to collect any claim or award for any reason.

2.8.2. Trustors hereby absolutely and unconditionally assigns to Beneficiary all condemnation awards, damages and compensation which it may be entitled to receive, all of which shall be paid to Beneficiary to be disposed of in the same manner as provided in **Section 2.4.3(b)** relating to insurance proceeds. Trustors waives the benefit of any law or decision contrary thereto, and hereby agrees to execute such further assignments thereof as Beneficiary may require.

2.9. Estoppel Certificates. Trustors will promptly furnish, upon Beneficiary's request from time to time, a duly acknowledged written statement specifying: (a) all amounts believed by Trustors to be due on the Secured Obligations; (b) the existence and details of any modifications of the Secured Obligations asserted by Trustors (or specifying that there are no such

modifications); (c) the existence and details of any offsets, defenses or counterclaims asserted by Trustors which would in any way affect any liability of Trustors on any of the Secured Obligations (or specifying that there are no such offsets, defenses or counterclaims); and (d) such other matters as Beneficiary may reasonably require. Trustors' failure to provide any such statement, or to specify any asserted modification, offset, defense or counterclaim, shall conclusively establish the absence of any such modification, offset, defense or counterclaim.

2.10. Leases. If any portion of the Property or the Collateral is leased or to be leased by Trustors as lessor, subject to **Section 4.4**, and subject to the requirements of the separate Assignment of Lessor's Interest in Leases recorded herewith:

2.10.1. Trustors shall perform all covenants of the lessor under such leases.

2.10.2. Each such lease shall be absolutely subordinate to the lien and security interest of this Deed of Trust but shall contain a provision satisfactory to Beneficiary that in the event of a foreclosure sale hereunder, such lease, at the option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser as lessor.

2.11. Contracts, Leases, Permits, Licenses, Franchises. With respect to Property or Collateral consisting of rights in or under contracts, leases, permits, licenses, franchises and the like, other than those of inconsequential value and the breach or loss of which could have no material adverse effect upon Trustors, the Real Property, or any of the remaining Property or Collateral (the "**Agreements**"):

2.11.1. Trustors shall, at its sole cost and expense: (a) perform and satisfy every obligation and condition of the Agreements to be performed or satisfied by Trustors; (b) give prompt notice to Beneficiary of any notice of default given or received by Trustors under any Agreements, together with a complete copy of any such notice of default; (c) enforce, short of termination, the performance and satisfaction of every obligation and condition of the Agreements to be performed or satisfied by the other parties thereto; and (d) appear in and defend any action arising out of or relating to the Agreements or the obligations of any party thereunder.

2.11.2. Trustors shall not, without Beneficiary's prior written consent, take any action to: (a) terminate or amend any Agreements; (b) waive, or release the parties to any Agreements from, any obligation or condition to be performed or satisfied by such parties; or (c) make any other assignment or transfer of any of its rights in any Agreements, absolutely or for security. Any such purported action by Trustors without Beneficiary's prior written consent shall be void and shall constitute a default hereunder.

2.12. Further Agreements, Acts; Financing Statements. Trustors shall execute any and all further agreements, assignments, documents and financing statements, and take such other further acts, as Beneficiary may reasonably request from time to time in order to evidence, protect, perfect or continue the security interest of Beneficiary in the Property and/or the Collateral or otherwise carry out the purposes and intent of this Deed of Trust. Beneficiary may file financing statements in all states, counties and other jurisdictions as it may elect, without the signature of Trustors if permitted by law.

**ARTICLE 3.
ABSOLUTE ASSIGNMENT OF RENTS**

3.1. Absolute Assignment of Rents. Trustors absolutely and unconditionally hereby ASSIGNS and TRANSFERS to Beneficiary all of the Rents; reserving to Trustors only the right, prior to any default hereunder (which right shall terminate immediately and automatically upon any such default, without notice), to collect, receive and retain the Rents as and when (and not before) they become due and payable, but not otherwise. Trustors shall, at the request of Beneficiary, execute such further assignments to Beneficiary of such leases, agreements and Rents as Beneficiary may require.

3.2. Rights Upon Default. Upon any default hereunder which continues beyond the expiration of any applicable notice and cure periods, Beneficiary may, at any time and without notice, irrespective of whether a notice of default has been delivered to Trustee, and without regard to the adequacy of the security for the Secured Obligations, in person or by agent or representative with or without bringing any action or proceeding, or by a receiver appointed by a court, do any one or more of the following, in its own name or in the name of Trustors: (a) enter upon, take possession of and/or operate the Property, the Collateral or any part thereof; (b) sue for or otherwise collect and receive the Rents (including those past due and unpaid) and apply such Rents (less costs and expenses of operation (including reserves) and collection, including attorneys' and experts' fees and costs) to the payment of the Secured Obligations in such order and in proportions as Beneficiary in its absolute discretion may determine; (c) dispossess by usual proceedings any lessee defaulting in the payment of Rents; (d) lease the Property or the Collateral or any part thereof; (e) do any other acts which Beneficiary deems proper to protect this Assignment and its interests hereunder until all of the Secured Obligations are paid in full; and (f) exercise any other right permitted by law. The exercise of any of the foregoing rights shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice, nor render Beneficiary a mortgagee in possession.

**ARTICLE 4.
DEFAULT; REMEDIES; ACCELERATION**

4.1. Events of Default. Each of the following shall constitute a "*Default*" or "*Event of Default*" by Trustors under this Deed of Trust:

4.1.1. Trustors fails to pay or deposit any amount when due on any of the Secured Obligations; or

4.1.2. Trustors breaches or fails to satisfy or perform any condition, covenant or other provision of this Deed of Trust;

4.1.3. any representation or warranty in this Deed of Trust is or becomes untrue or misleading in any material respect; or

4.1.4. The occurrence of an Event of Default under the Transaction Documents.

4.2. Remedies.

4.2.1. If there occurs an event of default under this Deed of Trust, Beneficiary may, at its sole option, without notice to or demand upon Trustors, do any one or more of the following:

- (a) declare any or all of the Secured Obligations immediately due and payable, irrespective of any otherwise-applicable maturity date;
- (b) enter on or into the Property, in person, by agent or by court-appointed receiver, and take such action as Beneficiary may determine desirable to complete any unfinished development and/or to manage and operate the Property and/or the Collateral and/or to collect the Rents, and Beneficiary may apply any Rents collected against the Secured Obligations without in any way curing or waiving any default of Trustors;
- (c) foreclose, non-judicially and/or by judicial action, in any order, separately or together, at the same or different times and places, against some or all of the Property, the Collateral, and/or any other real or personal property security for the Secured Obligations, without waiving any other part thereof;
- (d) require Trustors to assemble any or all of the Collateral and make it available to Beneficiary in a place designated by Beneficiary, and sell the Collateral at the Property or elsewhere, with or without having the Collateral at the place of sale;
- (e) without removal, render the Collateral unusable and dispose of it on the Property;
- (f) enter upon the Property and possess and remove any or all of the Collateral without legal process, if Beneficiary can do so without a breach of the peace, or by legal action for possession;
- (g) exercise any or all other remedies now or in the future available to a secured party under the Utah Uniform Commercial Code;
- (h) obtain the appointment of a receiver ex parte and without prior notice to Trustors, which notice Trustors hereby waives;
- (i) exercise any other legal, equitable or contractual right or remedy against Trustors and/or any security and/or any other person liable (by way of guaranty, assumption, endorsement or otherwise) upon the Secured Obligations.

4.2.2. No remedy provided or permitted under this Deed of Trust is exclusive of any other, or of any remedy provided or permitted by law, equity or any instrument or agreement evidencing, securing, guarantying or relating to any of the Secured Obligations. Each such remedy is cumulative and in addition to every other. No exercise of remedies, including foreclosure, against any part of the Property or the Collateral shall extinguish Beneficiary's rights to exercise

remedies, including foreclosure, against any other part of the Property or the Collateral until the Secured Obligations are paid in full. Beneficiary may exercise any one or more of its remedies at its option without regard to the adequacy of its security.

4.2.3. No delay or omission of Trustee or Beneficiary in the exercise of any right, remedy or power accruing upon any event of default hereunder shall impair such right, remedy or power or any other, nor shall such delay or omission be deemed a waiver of or acquiescence in any default.

4.2.4. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and/or taking possession of all or any part of the Property or the Collateral, nor any collection of Rents or other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustors has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease, or option or a subordination of the lien of this Deed of Trust.

4.3. Sale(s) by Trustee of the Property and Collateral.

4.3.1. If Beneficiary elects to sell any of the Property (separately from or together with all or any part of the Collateral) under the power of sale herein granted, Trustee shall record and give all notices of default, election to sell and sale(s) as may be required by law. Upon the expiration of such time as is required by law, Trustee shall, without demand on Trustors, sell the Property (and, if so directed by Beneficiary, all or any portion of the Collateral) upon any terms and conditions specified by Beneficiary and permitted by law, at the time and place (or the times and places) fixed in the notice(s) of sale(s), as a whole or in separate parcels or items, and in such order, as Beneficiary may direct in its sole discretion, at public auction(s) to the highest bidder for cash payable at the time of sale(s). Trustors waives all rights (a) to require that the Property and/or Collateral be sold together or separately, (b) to direct the order in which any of the Property or Collateral will be sold, and (c) to have any of the Property or Collateral marshalled upon any sale. Trustee may postpone any sale from time to time by public announcement at the time and place of the sale as fixed by notice or by prior postponement.

4.3.2. Any person, including Trustee or Beneficiary, may purchase at such sale. Trustee shall deliver to the purchaser a deed conveying the Property or portion thereof sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

4.3.3. Upon a sale by Trustee, and after deducting all costs, expenses, and fees of Trustee and of this trust (including the cost of evidence of title in connection with the sale), Trustee shall apply the proceeds from the sale to the payment of the Secured Obligations in such order as Beneficiary may direct and the remainder, if any, to the person or persons legally entitled thereto.

4.4. Acceleration of Indebtedness Upon Sale of the Property, and Upon Change in Ownership, Control, or Membership of Trustors.

4.4.1. In the event Trustors, or any successor in interest to Trustors in the Property, sells, conveys, alienates, leases (other than pursuant to any leasing program approved by Beneficiary), assigns, transfers, encumbers, or disposes of the Property, or any part thereof or any interest therein, or becomes divested of its title or any interest therein in any manner or way, absolutely or for security, voluntarily or involuntarily, or enters into an agreement to do so, without Beneficiary's prior written consent, then Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable without notice.

4.4.2. If Trustors, or any successor in interest to Trustors in the Property, is a corporation, trust, limited or general partnership, limited liability company or joint venture, should there occur a sale, conveyance, transfer, disposition or encumbrance, absolute or for security, voluntary or involuntary, or should an agreement be made to do so, without Beneficiary's prior written consent, with respect to any of the issued and outstanding capital stock of Trustors or such successor (if a corporation), or with respect to any limited partnership interests in Trustors or such successor (if a limited partnership), or with respect to any beneficial interest in Trustors or such successor (if a trust), or with respect to any general partner or joint venture interest in Trustors or such successor (if a general or limited partnership or joint venture), or with respect to any membership interests in Trustors or such successor (if a limited liability company), or if there shall occur such a change in any general partner, joint venturer or member in Trustors or such successor, then Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable without notice.

4.4.3. No waiver of the requirement of consent by Beneficiary as set forth herein shall be effective unless in writing. Consent by Beneficiary to any one or more transactions described in **Sections 4.4.1** or **4.4.1** shall not constitute nor be deemed to be a consent, or waiver of the requirement of consent, as to any future or succeeding transactions.

4.5. Acceleration of Indebtedness Upon an Event of Bankruptcy or Insolvency. Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable, without notice, if (a) any proceeding under the Bankruptcy Code, or under any present or future federal, state or other statute, law or regulation pertaining to bankruptcy, insolvency or other relief for debtors shall be instituted by or against Trustors or any other person who may be liable (by way of guaranty, assumption, endorsement or otherwise) upon the Secured Obligations; or (b) a receiver or custodian shall be appointed for Trustors, such other person or the Property or Collateral or if Trustors or such other person shall make an assignment for the benefit of creditors and if such receiver or custodian shall not be dismissed, or such assignment shall not be voided, within sixty (60) days of such institution, appointment or making.

**ARTICLE 5.
MISCELLANEOUS PROVISIONS**

5.1. Acceptance of Trust; No Duty to Notify. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is under no obligation to notify any party hereto of any action or proceeding in which Trustors, Beneficiary or Trustee is a party, unless brought by Trustee hereunder.

5.2. Substitution of Trustees. Beneficiary may, from time to time, by written instrument executed and acknowledged by Beneficiary and recorded in the county where the Real Property is located, substitute a successor or successors to any Trustee named herein or acting hereunder.

5.3. Affidavit to Trustee. Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary setting forth any fact(s) showing a default by Trustors under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon.

5.4. General Rights of Beneficiary and Trustee. At any time or from time to time, without liability therefor, without notice and without affecting the liability of any person (including Trustors) for the payment or performance of any of the Secured Obligations or the lien and security interest of this Deed of Trust:

5.4.1. Beneficiary may do any one or more of the following: release any person liable for the payment or performance of any of the Secured Obligations; extend the time or otherwise alter the terms of payment of any of the Secured Obligations; accept additional security therefor of any kind, including deeds of trust and mortgages; and alter, substitute or release any portion of the Property or the Collateral securing the Secured Obligations;

5.4.2. Trustee may, with Beneficiary's prior written consent, do any one or more of the following: consent to the making of any map or plot of the Property; join in granting any easements or creating any restrictions on the Property; join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust; and reconvey or release any portion of the Property or the Collateral.

5.5. Power of Attorney. Trustors irrevocably appoints Beneficiary as Trustors' attorney-in-fact, coupled with an interest, to perform any actions necessary and incidental to exercising the Remedies. (a) to execute and record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest in the Property or the Collateral, (b) to perform any actions necessary and incidental to exercising any right or remedy hereunder; and (c) upon the occurrence of a default, to perform any obligation of Trustors under this Deed of Trust; provided, however, that Beneficiary, as such attorney-in-fact, shall be accountable only for such funds as are actually received by Beneficiary, Beneficiary shall have no duty to act as such attorney-in-fact, and Beneficiary shall not be liable to Trustors or any other person or entity for any failure to act.

5.6. No Merger. No merger shall occur, and Beneficiary shall not be deemed to have intended that any merger occur, as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property or the Collateral, unless Beneficiary consents to a merger in writing.

5.7. Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid, upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment to Trustee of its fees, costs and expenses incurred or to be incurred thereby, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5.8. Acceptance of Late and Partial Payments. The acceptance by Beneficiary of the payment of any of the Secured Obligations or any installment thereof after its due date shall not constitute a waiver of the right to require prompt payment when due of all other and future Secured Obligations or installments, or to declare a default as herein provided for any failure to so pay, or to proceed with foreclosure or other remedies for any other default then existing. The acceptance by Beneficiary of a portion of any amount due on any Secured Obligation shall neither cure nor excuse the default caused by failure to pay the whole amount due or affect any notice of default, unless such notice is expressly revoked in writing by Beneficiary. Such acceptance shall not constitute a waiver of Beneficiary's rights to require full payment when due of all other and future sums.

5.9. Partial Invalidity of this Deed of Trust. In the event any one or more of the provisions of this Deed of Trust or the instruments or agreements reflecting the Secured Obligations are held to be invalid, illegal, unenforceable or avoidable in any respect, no other provision of this Deed of Trust, or of any such other instrument or agreement, shall be affected thereby, and such other provisions shall remain binding and enforceable.

5.10. Governing Law. This Deed of Trust has been executed and delivered in, and is to be construed, enforced and governed according to and by the internal laws of, the State of Utah, except to the extent federal law applies.

5.11. Parties Benefitted. Subject to **Section 4.4** this Deed of Trust applies to, inures to the benefit of and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "**Beneficiary**" shall mean the owner and holder, including pledgees, of any of the Secured Obligations.

5.12. Headings. Headings herein are used for convenience of reference only and do not define or limit the scope of provisions of this Deed of Trust.

5.13. Waiver of Limitations. Trustors waives the pleading of any statute of limitations as a defense to the Secured Obligations to the fullest extent permissible by law.

5.14. Waiver. To the extent permitted by law, Trustors waives the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Property or the Collateral, extension of the time for performance of the Secured Obligations, or creation or extension of a period of redemption from any sale. Trustors further waives all rights

and remedies which Trustors may have or be able to assert by reason of the laws or decisions pertaining to the rights and remedies of sureties.

5.15. Tax. In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of real property, for tax purposes, any lien or charge thereon, or changing in any way the laws now existing for the taxation of deeds of trust or indebtedness secured by deeds of trust for federal, state or local purposes, or changing the manner of collection of any such taxes as to affect this Deed of Trust or the Secured Obligations, Trustors agrees to pay such tax arising from such new law unless it would be illegal to do so. If Trustors fails to do so, Beneficiary may, at its election and without demand or notice, declare the Secured Obligations immediately due and payable.

5.16. Notices. All notices hereunder shall be deemed to have been duly given if personally delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, to the parties at their addresses set forth in the first paragraph hereof, or such other addresses as they may designate by notice thereof, and shall be deemed complete upon such person delivery or such mailing.

5.17. Statements of Indebtedness. Trustors agrees to pay Beneficiary reasonable charges, not to exceed the maximum allowed by law, for giving any statement of the status of the Secured Obligations.

5.18. Joint and Several Obligations. If more than one person has executed this Deed of Trust as "**Trustors**," the obligations of all such persons shall be joint and several. Any married person who executes this Deed of Trust agrees that recourse may be had against his or her separate property. If Trustors is a partnership, the obligations of Trustors shall be the joint and several obligations of all general partners therein.

5.19. Interpretation. The words "**herein**," "**hereof**," "**hereunder**" and words of similar import refer to this Deed of Trust as a whole and not to any particular Article, Section or subdivision hereof. All references to "**Articles**," "**Sections**," "**Exhibits**" and other parts or subdivisions are to the corresponding Articles, Sections, Exhibits or parts or subdivisions of this Deed of Trust, unless otherwise specified. The terms "**include**," "**including**" and forms thereof mean inclusive without limitation. The term "**day**" means calendar day. The term "**person**" means any individual, corporation, partnership, limited liability company, governmental entity or authority, or other entity of any kind.

5.20. Approvals, Consents, Waivers; Acceptability to Beneficiary. No approval, acceptance or consent of Beneficiary required by any provision of this Deed of Trust, nor any statement or waiver of any required approval, acceptance, acceptability, consent or condition, shall be deemed to have occurred unless set forth in writing, signed by Beneficiary, and delivered to Trustors. Any approval, acceptance, consent, waiver or statement of acceptability granted by Beneficiary shall be applicable only to the particular occurrence, circumstance or instance identified in such writing, and shall not constitute a continuing approval, acceptance, consent, waiver or statement of acceptability or be otherwise applicable to any other occurrence, circumstance or instance, whether similar or dissimilar. When this Deed of Trust requires the consent or approval of Beneficiary, or provides that any document, matter, act, event, occurrence

or person must be satisfactory or acceptable to Beneficiary or words of similar import, such consent or approval may be given or withheld by Beneficiary, and such document, matter, act, event, occurrence or person must be satisfactory or acceptable to Beneficiary, in its sole and absolute discretion, unless otherwise expressly provided herein or therein.

5.21. Amendments. This Deed of Trust cannot be modified, amended or terminated except by written agreement writing signed by the party against whom enforcement of any modification, amendment or termination is sought.

5.22. Time is of the Essence. Time is of the essence of this Deed of Trust and of every part hereof, and Trustors therefore acknowledges that Beneficiary has no obligation to grant any extension of any provision thereof, and any extension which Beneficiary may elect to grant may be conditioned upon such terms and conditions as Beneficiary may impose in its sole discretion.

5.23. Request for Notice. Trustors requests that a copy of any notice of default or any notice of sale hereunder be mailed to Trustors at the address set forth in the first paragraph hereof.

5.24. WAIVER OF RIGHTS OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY LAW, EACH OF TRUSTORS AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG TRUSTORS AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, THE LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT), THE OBLIGATIONS OF TRUSTORS OR BENEFICIARY UNDER THE LOAN DOCUMENTS, OR THE ACTIONS OF TRUSTORS OR BENEFICIARY RELATING TO SUCH OBLIGATIONS AND/OR THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS DEED OF TRUST AND THE LOAN DOCUMENTS. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO BENEFICIARY TO TAKE THIS DEED OF TRUST AS SECURITY FOR THE NOTE.

5.25. Environmental. In accordance with Utah Code Ann. § 78B-6-901, Beneficiary may bring an action for breach of contract against Trustors for breach of any “environmental provision” (as such term is defined in such Section) made by Trustors herein or in any other Loan Document for the recovery of damages and/or the enforcement of the environmental provision. In accordance with the Utah Code Ann. § 78B-6-901, Beneficiary may waive the security under this Deed of Trust with respect to any parcel of the Real Property that is “environmentally impaired” or is an “affected property” (as such terms are defined in such Section), and as to any personal property which is attached to such parcel, and thereafter exercise against Trustors, to the extent permitted by such Section, the rights and remedies of an unsecured creditor, including reduction of Beneficiary's claim against Trustors to judgment, and any other rights and remedies permitted by law. In the event Beneficiary elects, in accordance with the Utah Code Ann. § 78B-6-901, to waive all or part of the security under this Deed of Trust and proceed against Trustors on an unsecured basis, the valuation of the real property, the determination of the environmentally

impaired status of such security and any cause of action for money judgment shall, at the request of Beneficiary, be referred to a referee. Such referee shall be an M.A.I. appraiser selected by Beneficiary and approved by Trustors, which approval shall not be unreasonably withheld or delayed. The decision of such referee shall be binding upon both Beneficiary and Trustors and judgment upon the award rendered by such referee shall be entered in the court in which such proceeding was commenced. Trustors shall pay all costs and expenses incurred by Beneficiary in connection with any proceeding under this Section 5.25.

ARTICLE 6. NON-FOREIGN ENTITY CERTIFICATION

6.1. Non-Foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (“*Internal Revenue Code*”) provides that a transferor of a U.S. real property interest must withhold tax if the transferor is a foreign person, as set forth therein. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of any of the Property pursuant to the terms of this Deed of Trust, Trustors hereby certifies, under penalty of perjury, that:

6.1.1. Trustors is not a foreign corporation, foreign partnership, foreign trust, foreign limited liability company or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; and

6.1.2. the tax identification number of Trust delivered to Beneficiary is true and correct and shall not be changed by Trustors; and

6.1.3. Trustors’ chief executive office and principal place of business is the address set forth on the first page of this Deed of Trust.

6.2. Disclosure. Beneficiary may disclose the contents of this certification to the Internal Revenue Service.

6.2.1. Further Certifications. Trustors shall execute such further certifications, under penalty of perjury, as Beneficiary may reasonably require.

6.2.2. Survival. Trustors’ certifications under this Section 6.2.2. shall survive the reconveyance, foreclosure and/or acceptance of a deed in lieu of foreclosure of this Deed of Trust.

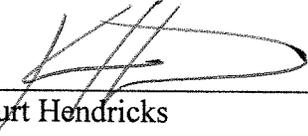
6.3. Penalties. Trustors acknowledges that false statements in its certifications under this Section 6.3 may be punishable by fine, imprisonment or both.

[Signature on Following Page.]

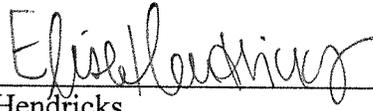
IN WITNESS WHEREOF, this Deed of Trust is executed as of the date first written above.

TRUSTORS:

Kurt Hendricks



Elise Hendricks



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF UTAH)
 Salt Lake)
COUNTY OF ~~UTAH~~)
 Salt Lake)

On Dec. 21, 2022, before me, Samantha Bluemel a Notary Public personally appeared Kurt Hendricks & Elise Hendricks who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of UTAH that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Samantha Bluemel
Signature

(Seal)

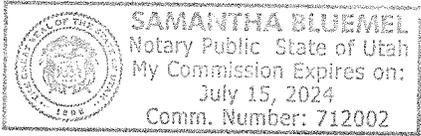


EXHIBIT "A"
Description of Real Property

786 S 350 E

Lehi UT 8404

Legal Description: LOT 102, MADISON MEADOWS WEST SUB AREA 0.331 AC

Exhibit A
to
Deed of Trust, Assignment of Rents and Leases,
Security Agreement and Fixture Filing