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Book - 10865 Pg - 3048-3062  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
OLD REPUBLIC TITLE DRAPER/OREM  
BY: eCASH, DEPUTY - EF 15 P.

*When Recorded Return to:*

Jack and Mary Lois Wheatley Family Trust  
1150 South Bonneville Drive  
Salt Lake City, Utah 84108  
Attn: Jack R. Wheatley, Trustee

1940902MT

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

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

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

Maximum principal amount to be advanced: **\$5,000,000.00**; however, such maximum principal amount to be advanced may be exceeded by principal advances made to complete construction of improvements upon, and otherwise to protect, the subject property.

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

THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING, AND ASSIGNMENT OF RENTS (the "**Deed of Trust**") dated to be effective November \_\_\_\_, 2019, is made by and among 4 Independence, LLC, a Utah limited liability company (the "**Trustor**"), whose address is Exchange Place, Building B, 14034 South 145 East, Suite 204, Draper, Utah 84020; Old Republic Title (the "**Trustee**"), whose address is 898 North 1200 West, Suite 101, Orem, Utah 84057; and Charles Wheatley, trustee of the Jack and Mary Lois Wheatley Family Trust (the "**Beneficiary**"), whose address is 1150 South Bonneville Drive, Salt Lake City, Utah 84108.

**1. Granting Clause.** For good and valuable consideration, including the indebtedness described below and the trust created hereby, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, *in trust, with power of sale*, for the benefit and security of Beneficiary, all of Trustor's estate, right, title, and interest in and to that certain real property located in Salt Lake County, State of Utah, more particularly described on EXHIBIT A attached hereto and incorporated herein by this reference (the "**Property**"); together with:

1.1 Easements, Etc. All access rights, easements, tenements, privileges, rights, hereditaments, and appurtenances now or hereafter belonging or in any way appertaining to the Property;

1.2 Rents. The rents, issues, profits, royalties, income, and other benefits derived from the Property;

1.3 Improvements. All buildings, improvements, structures, fixtures, and articles of property now or hereafter erected on, attached to, located on, or used or intended to be used in connection with the Property; and

1.4 Additional Property and Rights. All water rights, water shares, and other property or rights of any kind or nature further set forth herein; all of which shall be deemed to be and remain a part of the Property and not severable wholly or in any part without material injury to the freehold and shall be included in any references to the Property hereunder.

**2. Security Agreement.** This Deed of Trust shall also constitute a "Security Agreement" under the Uniform Commercial Code as adopted in the State of Utah (the "**UCC**") between Trustor as debtor and Beneficiary as secured party. As additional security for the performance of the obligations secured hereby, Trustor further grants and conveys to Beneficiary a security interest and a continuing lien on the following-described property and all proceeds of such property (collectively, the "**Collateral**"), all of which Collateral shall be deemed a part of and shall be included in any reference to the Property hereunder:

2.1 Permits, Plans, and Contracts. All of Trustor's right, title, and interest in all permits, approvals, entitlements, commitments, designs, plans, specifications, architectural and engineering contracts, construction contracts, surveys, appraisals, listing agreements, warranties, and any and all other work product or general intangibles relating to the Property or any part thereof and now or hereafter owned by Trustor, including, without limitation, the Permits, Contracts, and Plans as defined in Section 6 below and any and all rights or claims that relate to the construction of improvements on or to the Property that Trustor may have against any person or entity supplying, or who has supplied, labor, materials, or services in connection with the construction of improvements on the Property;

2.2 Rights Under Covenants. All of Trustor's rights under any declarations of covenants, conditions, and restrictions recorded for the Property, including all of Trustor's rights and powers to elect or select officers and directors for any Homeowners' Association established for the Property;

2.3 Insurance; Eminent Domain. All of Trustor's rights under any and all contracts and policies of insurance with respect to the Property and to any and all awards made in connection with any eminent domain or condemnation proceedings, or purchases in lieu thereof, of the whole or any part of the Property;

2.4 Rights of Sale. All of Trustor's right, title, and interest in any contracts or agreements of sale with respect to the Property, all purchase money indebtedness to Trustor related to any sale, and any cash proceeds of such sale;

2.5 Improvement, Fixtures, etc. All improvements, fixtures, equipment, furnishings, appliances, machinery, apparatus, goods, construction materials, and other articles of personal property owned by Trustor and now or hereafter affixed to, placed upon, or used in connection with the Property, including, but not limited to, any structures constructed on the Property, all pipes for water and sewer lines, cables, electrical wires for power systems, and construction materials, and any and all replacements and improvements thereof;

2.6 Other Property. Any and all other property or rights of any kind or nature further identified herein; and

2.7 Proceeds. Any and all interest and estate that Trustor or Trustor's assigns may hereafter acquire in any of the above Property and all the rents, issues, proceeds, products, and profits of such Property.

3. **Fixture Filing.** It is intended that the recording of this Deed of Trust shall be effective as a "fixture filing" under Article 9 of the UCC with respect to any and all fixtures included within the Collateral and all goods or personal property that are now or may hereafter become affixed to the Property, and the Deed of Trust is to be filed and indexed in the real estate records not only as a deed of trust, but also a fixture filing.

4. **Obligations Secured.** This Deed of Trust is given for the purpose of and does secure the following obligations (collectively, the "**Obligations**"): (1) payment of the indebtedness evidenced by a Revolving Line of Credit Agreement, in the principal sum of up to **\$5,000,000.00** executed by Trustor, as borrower, and Beneficiary, as lender, at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof (the "**Line of Credit**"); (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor or its successors or assigns, when evidenced by a promissory note, notes or line of credit or other instrument reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

Trustor further covenants and agrees as follows:

5. **Assignment of Rents.** Trustor hereby assigns and transfers to Beneficiary all its rights and profits from the Property and the right, title, and interest of Trustor in and under all leases now or hereafter affecting the Property. This assignment is absolute, unconditional, and not in the nature of a security interest, it being the intention of Trustor to establish a complete and present transfer of all

interests assigned hereunder with the right, but without the obligation, to collect all rents and profits of the Property. So long as Trustor is not in default hereunder, Trustor may collect assigned rents and profits as the same fall due; but, upon the occurrence of any Event of Default hereunder, all rights of Trustor to collect or receive rents and profits shall terminate. Further, all rents and profits of Trustor receivable from or in respect to the Property that Trustor shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and taxes upon, the Property and the sums owing Beneficiary on the obligations secured hereby. In the event of any default hereunder and the exercise by Beneficiary of its rights herein granted, Trustor agrees that payment made by tenants or occupants to Beneficiary shall be considered as though made to Trustor and in discharge of the tenants' obligations to Trustor. Nothing herein contained shall be construed as obligating Beneficiary to perform any of Trustor's covenants under any lease or rental arrangement.

**6. Assignment of Permits, Contracts, and Plans.** In addition to and without in any way derogating from the security interest granted Beneficiary in the Collateral, Trustor hereby assigns, grants, transfers, and sets over unto Beneficiary, Trustor's right, title, and interest in, to, and under any and all permits, approvals, commitments, designs, plans, specifications, construction, architectural and engineering contracts, subcontracts, appraisals, listing agreements, and any and all other contracts for work product relating to development or construction on the Property or any part thereof, together with all amendments, modifications, supplements, revisions, and addenda thereto heretofore or hereafter prepared or executed (collectively, the "**Permits, Contracts, and Plans**").

6.1 Security for Loan. This assignment is made as additional security for the payment and performance of all of the Obligations of Trustor set forth in Section 4 above.

6.2 Liabilities. Beneficiary does not assume any obligations or duties of Trustor under the Permits, Contracts, and Plans unless and until Beneficiary shall have given Trustor written notice that it is exercising its right to complete or cause the completion of construction on the Property. If Beneficiary does not directly undertake to complete development or construction of the Property, Beneficiary may assign such Permits, Contracts, and Plans to, and such obligations and duties of Trustor in connection with the Permits, Contracts, and Plans shall be assumed by, the person or entity designated by the Beneficiary for the purpose of completing such development or construction, and Beneficiary shall have no liability whatsoever for the performance of any such obligations and duties.

6.3 Representations and Warranties of Trustor. Trustor represents and warrants to Beneficiary that:

6.3.1 No Prior Assignments. There have been no prior assignments of its rights, title, and interest in, to, and under the Permits, Contracts, and Plans;

6.3.2 Authority. Trustor has full power and authority to assign its rights, title, and interest in, to, and under the Permits, Contracts, and Plans to Beneficiary and no consents or approvals of any other person or entities are necessary in order for Trustor to validly execute, deliver, and perform this assignment; and

6.3.3 No Defaults or Modifications. All covenants, conditions, and agreements set forth in the Permits, Contracts, and Plans have been performed as required as of the date hereof and neither Trustor nor any other party is in default thereunder. Trustor shall not amend or modify any of the terms and conditions of the Permits, Contracts, and Plans without the prior written approval of Beneficiary, nor shall Trustor assign, transfer, mortgage, or otherwise convey or encumber any of its rights, title, or interest in, to, or under the Permits, Contracts, and Plans so long as any of Trustor's obligations under the Line of Credit remain unfulfilled.

6.4 Attorney-in-Fact. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact, upon the occurrence of any defaults hereunder or under the Line of Credit, to demand, receive, and enforce any and all of Trustor's rights under and with respect to the Permits, Contracts, and Plans, and to perform any and all acts with respect to the Permits, Contracts, and Plans that Beneficiary deems necessary or desirable with the same force and effect as if performed by Trustor in the absence of this assignment.

6.5 Assignment for Security. This assignment is for security purposes only. Beneficiary shall have no right pursuant to this assignment to enforce Trustor's rights with respect to the Permits, Contracts, and Plans until Trustor shall be in default under any of its obligations to Beneficiary pursuant to this Deed of Trust or the Line of Credit. On the occurrence of any such default, Beneficiary, without affecting any of its rights or remedies against Trustor under any other instrument, document, or assignment, may exercise its rights under this assignment or in any other manner permitted by applicable law, and in addition, Beneficiary shall have and possess, without limitation, any and all rights and remedies of a secured party under the UCC or as otherwise provided by law.

7. **Nature of Property/Remedies.** Trustor and Beneficiary agree that the filing of a financing statement in the records having to do with personal property in connection with the Security Agreement provided herein shall never be construed as in any way derogating from or impairing the declaration and the stated intention of the parties hereto that the Property and all components thereof are, to the maximum extent possible, real property, subject to Beneficiary's right on default to exercise, in any manner permitted by applicable law, those remedies (a) available to Beneficiary under this Deed of Trust, (b) available to Beneficiary as a secured party under the provisions of the UCC, or (c) otherwise provided for by law or available in equity. Whenever Beneficiary's security shall be deemed to include personal property, Beneficiary shall be entitled to foreclose against such property in connection with and as a part of any judicial or nonjudicial proceeding against the real property secured hereby, the parties hereby acknowledging that such foreclosure constitutes a commercially reasonable method of selling such property, or, in Beneficiary's sole discretion and as permitted by applicable law, to pursue any and all other remedies afforded a secured party under the UCC or other applicable law. In case of a default hereunder, Trustor agrees to assemble all such property and make it available to the Trustee or Beneficiary as secured party at a place to be designated by such party that is reasonably convenient to all parties.

8. **Representations and Warranties.** To protect the security of this Deed of Trust and for the benefit of Beneficiary, Trustor does, for Trustor and for Trustor's successors and assigns, represent, covenant, warrant, and agree as follows:

8.1 Warranty of Title. That Trustor has good and marketable title to an indefeasible fee simple estate in all real property described herein subject only to such liens and encumbrances, if any, specifically described herein or otherwise accepted or approved by Beneficiary in writing; that Trustor owns all of the Property described herein free from liens, security interests, and encumbrances of any kind (other than those approved in writing by Beneficiary); that Trustor is vested with the right to convey all real property described herein to Trustee for the benefit of Beneficiary; and that no consent of other parties is required as a condition thereto. Trustor does hereby and will forever warrant and defend title to the Property herein conveyed and defend the validity and priority of the lien of this Deed of Trust against the claims and demands of all persons and parties;

8.2 Commercial Instrument. That this Deed of Trust is and will continue to be a commercial Deed of Trust and that the proceeds of the loan secured hereby will be used for business or commercial purposes other than agricultural, timber, grazing or farming purposes, and not for personal, family, or household purposes;

8.3 Legal Entity, Business, Etc. That while any sums remain outstanding hereunder, Trustor will: (a) maintain its existence in the form under which it currently operates, and preserve in full force and effect all its rights and franchises having a material effect upon its business or the ownership of its properties; and (b) give prompt notice to Beneficiary of any material change in Trustor's business or financial position, any change in any location where Trustor's accounts and/or assets are to be maintained, the location of any new places of business of Trustor and the changing or closing of any of its existing places of business, and any change in Trustor's name; and

**9. Maintenance and Inspection of Improvements.** Trustor shall maintain the buildings and other improvements now or hereafter located on the Property in a first-class condition and state of repair and shall not allow any material changes in the current use of the Property or its zoning without Beneficiary's consent. Trustor shall not commit or suffer any waste; shall promptly comply with all the requirements of federal, state, and municipal authorities and all other laws, ordinances, regulations, covenants, conditions, and restrictions respecting the Property or the use thereof; and shall pay all fees or charges of any kind in connection therewith. Trustor shall complete or restore promptly and in a workmanlike manner any building or improvement that may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Beneficiary and its employees and agents shall be entitled from time to time to enter on the Property (including the interior of any structures), at reasonable times and after reasonable notice, to inspect the Property, ascertain compliance with the Hazardous Substances warranties set forth below and other provisions of this Deed of Trust (including the right to take soil samples and conduct other reasonable tests and investigations), conduct appraisals to determine the value of the Property, or to perform any other act authorized hereunder. Costs incurred in obtaining such inspections, appraisals, tests, and other activities described above shall be part of the obligations secured hereby. Trustor will permit access to the Property and will fully cooperate with Beneficiary in this regard.

**10. Construction.** This Deed of Trust is given to secure a construction and development loan.

**11. Alterations.** No building or other improvement on the Property shall be structurally altered, removed, or demolished without Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the Property be removed at any time without such consent unless actually replaced by an article of equal suitability, owned by the Trustor.

**12. Hazardous Substances.** As used herein, "*Hazardous Substance*" means any substance that is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup (collectively, "*Environmental Laws*"). Trustor warrants that, except as otherwise disclosed to Beneficiary in writing, no Hazardous Substance has been generated, processed, stored, transported, incorporated into, handled or disposed of on the Property to Trustor's best knowledge, except in compliance with all applicable laws. Trustor agrees that during the term of this Deed of Trust, Hazardous Substances will not be generated, processed, stored, transported, handled or disposed of on the Property, except in accordance with all Environmental Laws. Trustor is not aware of any actual or alleged violation of any Environmental Laws related to the Property and there is no action or proceeding pending before or appealable from any court or agency relating to Hazardous Substances and the Property. Trustor shall defend, hold harmless, and indemnify Beneficiary against any claims, costs, liens, damages, losses, expenses or liabilities arising out of or related to any alleged violations of Environmental Laws related to the Property. Trustor's obligation to Beneficiary under this section is strict and absolute without regard to any fault by Trustor. Trustor shall immediately notify Beneficiary if Trustor becomes aware of any alleged or actual violation of Environmental Law related to the Property. Trustor will, at its sole expense, take all action necessary to

comply with Environmental Law (including without limitation, any removal, clean-up, containment and remedial actions).

**13. Insurance.** Trustor shall at all times provide, maintain and keep in force, at its own cost and expense, insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on the Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustee shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

**14. Payment of Liens and Taxes.** Trustor shall keep the Property free from construction liens of any kind and pay all taxes, assessments, and other charges that may be levied or assessed upon or against the Property before any part of such taxes, assessments, or other charges become past due or delinquent and promptly deliver receipts therefor to Beneficiary.

**15. Defense of Property.** Trustor shall appear in and defend any suit, action, or proceeding that might affect the value of this Deed of Trust, the Deed of Trust itself, or the rights and powers of Beneficiary or Trustee, including, without limitation, any condemnation or public improvement proceeding, and should Beneficiary or Trustee elect also to appear and defend any such action or proceeding, be made a party to such by reason of this Deed of Trust, or elect to prosecute such action as appears necessary to preserve said value, Trustor will, at all times, indemnify from and, on demand, reimburse Beneficiary or Trustee for any and all loss, damage, expense, or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action, or proceeding.

**16. Beneficiary Authorized to Act.** Should Trustor fail to make any payment or to do any act as herein provided, Beneficiary or Trustee may, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof; (b) commence, appear in, and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the sole judgment of Beneficiary either appears to be prior or superior to this Deed of Trust; and, (d) in exercising any such power, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable attorneys' fees.

**17. Condemnation Proceeds.** In the event that all or any portion of the Property is taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking be paid to Beneficiary and applied by it first to any reasonable costs, expenses, and attorneys' fees, both in trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby. Trustor further agrees, at its own expense, to take such actions and execute such instruments as shall be necessary to obtain such compensation.

**18. Non-Waiver of Defaults.** The entering upon and taking possession of the Property, the collection of rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation or awards for any kind of taking or damage of the Property, and the application or release thereof as provided in this Deed of Trust shall not cure or waive any default or notice of default hereunder

or invalidate any act done pursuant to such notice of default. Further, by accepting payment of any sums secured hereby after their due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare the failure to pay such sums an Event of Default.

**19. Events of Default.** Each of the following circumstances shall constitute an event of default under this Deed of Trust (individually, an *“Event of Default”*): (a) the failure of Trustor to pay any sum herein or in the Line of Credit specified within ten days (10) following the date that such sum becomes due; (b) the failure of Trustor to satisfy any provision specified herein or in the Line of Credit as required within thirty (30) days following the date that Trustor receives written notice from Beneficiary of such failure; or (c) if Trustor shall: (i) apply for, or consent in writing to the appointment of a receiver or trustee of all or substantially all of its assets; (ii) file a voluntary petition in bankruptcy or admit in writing an inability to pay debts as such debts become due; (iii) make a general assignment for the benefit of creditors; (iv) make and file a petition or an answer seeking a reorganization or an arrangement with creditors or take advantage of any insolvency law; (v) file an answer admitting the material allegations of a petition filed in bankruptcy, reorganization or insolvency proceedings; or (vi) dissolve or terminate existence, or become insolvent.

**20. Acceleration Upon Default; Additional Remedies.** Upon any Event of Default, Beneficiary may, at its option foreclose this Deed of Trust as a mortgage; cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; exercise Beneficiary’s rights with respect to any leases and rents; and/or exercise any or all of the other rights and remedies under this Deed of Trust and the Line of Credit or available under law or in equity. To the extent permitted by law, every right and remedy provided in this Deed of Trust or afforded by law or equity or any other agreement between Beneficiary and Trustor may be exercised concurrently, independently, or successively, in any order whatsoever. Beneficiary may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

**21. Foreclosure by Power of Sale/Request for Notice.** After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by 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, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in immediately available fund in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser a Trustee’s Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee’s Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows: (a) FIRST: To the payment of the costs and expenses of such sale, including reasonable compensation to Trustee, Beneficiary, their agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities, and advances made or incurred by Trustee or Beneficiary under this Deed of Trust, together with interest at the default rate specified in the Line of Credit; (b) SECOND: To the payment of the whole amount then due, owing, or unpaid upon the Line of Credit for principal and interest, with interest on the unpaid principal and accrued interest at the rate specified in the Line of Credit, from and after the happening of any Event of Default from the due date of any such payment of principal until the same is paid; (c) THIRD: To the payment of all other Obligations required to be paid by Trustor pursuant to any provisions of the Line of Credit or this Deed of Trust; (d) FOURTH: The surplus, if any, to whomsoever may be lawfully entitled to receive the same, or Trustee, in Trustee’s



discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Trust Estate is located.

Upon any sale made under or by virtue of this section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust the net sales price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Beneficiary is authorized to deduct under this Deed of Trust. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

Should Beneficiary elect to foreclosure by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and request that Trustee proceed with all notices required by law. Trustor hereby requests a copy of any notice of default and that any notice of trustee's sale hereunder, as well as any other written notifications required by other provisions hereof, be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

**22. Foreclosure as Mortgage.** Should Beneficiary elect to foreclosure this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto (including costs on appeal), including reasonable attorneys' fees (and attorneys' fees on appeal), in such amount as shall be fixed by the court. Beneficiary shall be entitled to possession of the Property during any redemption period allowed under the laws of the State of Utah.

**23. Appointment of Receiver.** The Trustee or Beneficiary personally or by its agents or attorneys, or through a duly appointed receiver, may enter into and upon all or any part of the Property, and each and every part thereof, without notice to Trustor, and may exclude the Trustor and its agents wholly therefrom; and having and holding the same may possess, use, operate, manage, improve and control the Property and conduct the business thereof; and the Trustee or Beneficiary shall be entitled to collect and receive all earnings, revenues, rents, issues, profits, income, accounts, accounts receivable, contract rights and general intangibles included in the Property or generated by operations of the Property and every part thereof whether or not Beneficiary, Trustee, or a receiver is then in possession of the Property. Upon the occurrence of an Event of Default, Beneficiary shall be entitled to the appointment of a receiver as a matter of right, ex-parte and without notice to Trustor, whether or not the apparent value of the Property exceeds the indebtedness secured hereby, and any receiver appointed may serve without bond. Employment by Beneficiary shall not disqualify a person from serving as a receiver. The exercise of any right under this Section 23 shall not be deemed an election of remedies nor a "pending action" so as to preclude the exercise of any other right or remedy. Upon taking possession of all or any part of the Property, the receiver may:

23.1 Possess, use, operate, manage, control, and conduct the business of the Property and make expenditures for all maintenance and improvements as in its judgment are proper;

23.2 Collect all room rates, rents, revenues, income, issues, profits, contract rights, accounts, accounts receivable and general intangibles from the Property and apply such sums or the proceeds thereof to the expenses of use, operation and management; and

23.3 Complete any construction in progress and, in that connection, pay bills, borrow funds, employ contractors and make any changes in plans or specifications as it deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow, from Beneficiary or otherwise, such sums as it deems necessary for the purposes stated herein and repayment of such sums shall be secured by the lien hereof. The amounts borrowed from or advanced by Beneficiary shall bear interest at the default rate (as set forth in the Line of Credit), if any, from the date of expenditure until repaid, and such amounts and interest shall be an indebtedness of Trustor secured hereby.

**24. Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any obligations secured hereby and to exercise all rights and powers under this Deed of Trust, under any Loan Document or other agreement, or under any laws now or hereafter in force, notwithstanding some or all of the said obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, Deed of Trust, pledge, lien, guaranty, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be, to the extent permitted by applicable law, entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, or given by the Line of Credit or this Deed of Trust to Trustee or Beneficiary, and either of them may pursue inconsistent remedies. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right.

**25. Appointment of Successor Trustee.** Beneficiary may, for any reason permitted by law, from time to time appoint a successor or successors to any Trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when recorded in the office of the county clerk or recorder of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

**26. Duties of Trustee.** 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 of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless such action or proceeding is brought by Trustee.

**27. Repayment of Beneficiary's Expenditures and Advances.** Trustor shall immediately pay all sums expended or advanced hereunder or under the Line of Credit, and all costs incurred by Beneficiary or Trustee in enforcing or protecting their rights or interests hereunder or under the Line of Credit, and the same shall constitute advances made under this Deed of Trust and repayment thereof shall be secured hereby. If Trustor fails to pay any such expenditures, advances, costs, or expenses, together with interest thereon, Beneficiary may, in addition to the other remedies provided hereunder to the extent permitted by applicable law, at its sole discretion: (a) commence an independent action against Trustor for the recovery of such sums; and/or (b) advance any undisbursed loan proceeds to pay the same.

**28. Due on Sale.** Trustor acknowledges and agrees that the obligations secured by this Deed of Trust are personal to Trustor and that Trustor's personal responsibility, financial condition, and control of the Property were material inducements on which Beneficiary relied in making its loan to Trustor.

Trustor agrees that neither the Property nor any interest therein shall be encumbered, sold (by contract or otherwise), conveyed, leased, or otherwise transferred by Trustor, without the prior written consent of Beneficiary. Any such action without Beneficiary's prior written consent shall be deemed to increase Beneficiary's risk, and shall be an Event of Default hereunder. If Beneficiary elects in its sole discretion to consent to any such action, Beneficiary may condition its consent on such terms and conditions as Beneficiary may require, such as payment of a transfer review fee and/or assumption fee, and/or an increase in the interest rate on the obligations secured hereby. Beneficiary shall not be required to release the original obligor or any other party liable for such obligations.

**29. Partial Reconveyance.** Should the Line of Credit allow for the partial reconveyance from the encumbrance of the Deed of Trust of any portion of the Property upon the payment of a certain sum to Beneficiary ("**Partial Reconveyance**"), any such Partial Reconveyance shall be allowed only so long as the following additional conditions are met:

29.1 No Defaults. Trustor is not in default hereunder or under the terms of any of the Line of Credit;

29.2 Legally Subdivided. The Property has been legally subdivided into parcels or lots such that both (a) the portion of the Property to be reconveyed and (b) the portion of the Property remaining subject to the Deed of Trust are legally segregated properties capable of being transferred to third-party purchasers in accordance with the law;

29.3 Access Unimpaired. The Partial Reconveyance does not deny or unreasonably impair access to public roads and utilities for either the portion of the Property remaining subject to the Deed of Trust or the portion of the Property reconveyed;

29.4 Identification of Property. Trustor secures all necessary services of surveyors, engineers, and other consultants of any kind or nature whatsoever required in connection with the Partial Reconveyance in order to sufficiently identify the portion of the Property to be reconveyed and to enable the Trustee to complete the Partial Reconveyance; and

29.5 Costs. Trustor pays all costs incurred in connection with the Partial Reconveyance, including any endorsements Beneficiary may require to its mortgagee's policy of title insurance. Beneficiary shall have no responsibility for such costs and shall be reimbursed by Trustor for any costs incurred by Beneficiary.

**30. Further Assurances.** Trustor, from time to time, within fifteen (15) days after request by Beneficiary, shall execute, acknowledge, and deliver to Beneficiary such additional security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Trustor or in which Trustor has any interest which, in the reasonable opinion of Beneficiary, is essential to the operation of the Property covered by this Deed of Trust, and shall execute, acknowledge, and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document as Beneficiary may reasonably request in order to perfect, preserve, continue, extend, or maintain Beneficiary's security interests under or the priority of this Deed of Trust. Trustor shall pay all costs in connection with the preparation, execution, recording, filing, and refileing of any such documents.

**31. Assignment.** Beneficiary may assign this Deed of Trust in whole or in part to any person and may grant participation in any of its rights under the Deed of Trust without notice and without affecting Trustor's liability under this Deed of Trust. In connection with any proposed assignment, participation, or similar arrangements, Beneficiary may make available to any person all credit and

financial data furnished or to be furnished to Beneficiary by Trustor. Trustor may not assign the Deed of Trust to any person at any time, except in connection with a transaction approved in writing by Beneficiary under the terms of this Deed of Trust. Subject to such prohibitions against Trustor's assignment, this Deed of Trust shall inure to the benefit of and bind all of the parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors, and assigns.

**32. Applicable Law.** This Deed of Trust is made with reference to and is to be construed in accordance with the laws (without regard to the choice of law rules) of the State of Utah.

**33. Miscellaneous.** The term Beneficiary shall mean the holder and owner, including pledgee, of the obligations secured hereby, whether or not named as Beneficiary herein. In construing this Deed of Trust and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. This Deed of Trust may be executed in two or more counterparts, all of which will constitute one and the same instrument and lien.

**34. Powers of Trustee.** From time to time, upon written request of Beneficiary, and without affecting the obligations of Trustor for payment of any indebtedness or performance of the obligations secured hereby, Trustee may, without liability therefor and without notice, (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat thereof; (c) join in granting any easement thereon; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien hereof. Trustee or Beneficiary may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of the trusts created hereunder, including reasonable attorneys' fees, but in no event more than allowed by any then applicable statute. Trustor agrees to and does hereby indemnify Trustee and Beneficiary against all losses, claims, demands and liabilities which either may incur, suffer or sustain in the execution of the trusts created hereunder or in the performance of any act required or permitted hereunder or by law.

**35. Leases.** In the event Beneficiary shall institute judicial proceedings to foreclose the lien hereof, and shall be appointed as a mortgagee in possession of the Property, Beneficiary, during such time as it shall be mortgagee in possession, shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into leases of the Property or any portion thereof for such rents and for such periods of occupancy and upon such conditions and provisions as such mortgagee in possession may deem desirable, and Trustor expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any sale of the Property hereunder, it being the intention of Trustor that, while Beneficiary is a mortgagee in possession of the Property, Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable by Beneficiary. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest and shall not be revocable by Trustor.

**36. Marshaling of Assets.** Trustor hereby expressly waives all rights to require a marshaling of assets by the Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to the sale of any portion of the Property which might have been retained by Trustor before foreclosing upon and selling any other portion thereof.

**37. Severability.** If any term of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust or the

application of such term to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

**38. Modifications.** This Deed of Trust may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

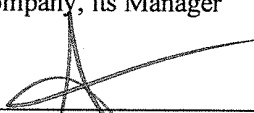
**39. Priority of Trust Deed.** The terms of the obligations secured hereby may provide that the interest rate, payment terms or balance due may be indexed, adjusted or renewed. The priority of this Deed of Trust shall not be affected by renegotiation or adjustment of the interest rate provided in the Line of Credit (which may increase or decrease the amount of periodic payments or extend or shorten the term of this Deed of Trust), any increase in the underlying obligation as a result of deferment of all or a portion of interest payments and the addition of such payments to the outstanding balance of the obligation, or the execution of new agreements which reflect such changes.

DATED as of the day and year first above written.

**TRUSTOR:**

4 INDEPENDENCE, LLC, a Utah limited liability company

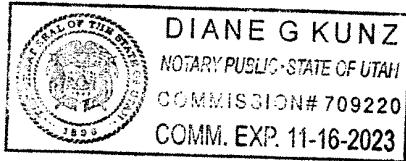
By: DAI Partners, LLC, a Utah limited liability company, its Manager

By:   
Name: Nathan Shipp  
Title: Manager

ACKNOWLEDGEMENT

State of Utah )  
  :SS  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2019, by Nathan Shipp, the Manager of DAI Partners, LLC, a Utah limited liability company, which is a Manager of 4 Independence, LLC, a Utah limited liability company



Diane G Kunz  
Notary Public  
Residing at: Salt Lake

My commission expires:  
11-16-2023

1511598

## EXHIBIT A

### Legal Description of Property

#### HERITAGE 76 PLAT A

A portion of the Southwest Quarter of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian, located in Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located S89°32'53"W along the section line 682.59 feet and South 3399.97 feet from the North Quarter Corner of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing: S89°46'54"W between the Northeast Corner and the North Quarter Corner of Section 14, T4S, R1W, SLB&M); thence along the arc of a 260.00 foot radius non-tangent curve to the right (radius bears: S10°58'49"W) 246.51 feet through a central angle of 54°19'26" (chord: S51°51'28"E 237.38 feet); thence S24°39'18"E 70.27 feet; thence along the arc of a 30.00 foot radius curve to the right 47.18 feet through a central angle of 90°06'33" (chord: S20°23'58"W 42.47 feet); thence S65°27'14"W 377.56 feet; thence S65°27'14"W 11.24 feet; thence N24°32'46"W 95.00 feet; thence S65°27'14"W 18.70 feet; thence N24°32'46"W 169.00 feet; thence N65°27'14"E 238.69 feet; thence along the arc of a 135.00 foot radius curve to the left 99.14 feet through a central angle of 42°04'38" (chord: N44°24'55"E 96.93 feet); thence along the arc of a 8.00 foot radius curve to the left 14.30 feet through a central angle of 102°23'47" (chord: N27°49'17"W 12.47 feet) to the point of beginning.

#### HERITAGE 76 PLAT B

A portion of the Southwest Quarter of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian, located in Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located S89°32'53"W along the section line 961.73 feet and South 3577.18 feet from the North Quarter Corner of Section 14, Township 4 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing: S89°46'54"W between the Northeast Corner and the North Quarter Corner of Section 14, T4S, R1W, SLB&M); thence S24°32'46"E 169.00 feet; thence N65°27'14"E 18.70 feet; thence S24°32'46"E 95.00 feet; thence S65°27'14"W 76.11 feet; thence along the arc of a 1938.50 foot radius curve to the right 324.25 feet through a central angle of 9°35'01" (chord: S70°14'45"W 323.87 feet); thence S82°00'59"W 366.26 feet; thence along the arc of a 310.00 foot radius non-tangent curve to the right (radius bears: N85°04'03"E) 470.44 feet through a central angle of 86°56'56" (chord: N38°32'31"E 426.58 feet); thence N82°00'59"E 118.64 feet; thence along the arc of a 644.00 foot radius curve to the left 186.16 feet through a central angle of 16°33'45" (chord: N73°44'07"E 185.51 feet); thence N65°27'14"E 53.53 feet to the point of beginning.