

WHEN RECORDED MAIL TO:

LHM, INC.  
Attn: Sarah Starkey  
9350 South 150 East, Suite 900  
Sandy, UT 84070

14034254 B: 11381 P: 4582 Total Pages: 14  
10/25/2022 11:02 AM By: ECarter Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: STEWART TITLE OF UTAH  
6955 S UNION PARK CTR STE 100MIDVALE, UT 840476516

## REVOLVING DEED OF TRUST

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TID: 26-22-405-004

THE NOTE (DEFINED BELOW) SECURED BY THIS DEED OF TRUST CONTAINS A PROVISION ALLOWING DEBTOR TO BORROW, REPAY AND REBORROW THEREUNDER, SO LONG AS THE TOTAL AMOUNT OUTSTANDING AT ANY ONE TIME DOES NOT EXCEED THE PRINCIPAL AMOUNT OF THE LOAN.

**THIS DEED OF TRUST**, (this “**Deed of Trust**”) is made as of the 21 day of October 2022, is given by DESTINATION HOMES, LLC, a Utah limited liability company, whose mailing address is 67 South Main Street, Suite 300, Layton, Utah 84041, as “**Trustor**” to STEWART TITLE INSURANCE AGENCY., a Utah corporation, whose mailing address is 5734 South 1475 East, Suite 100, Ogden, Utah 84403, as “**Trustee**”, for the benefit of LHM, INC., a Utah corporation whose mailing address is 9350 South 150 East, Suite 900, Sandy, Utah 84070, as “**Beneficiary**.”

**1. GRANT IN TRUST.** For the purpose of securing payment and performance of the Secured Obligations (as defined below), Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE TOGETHER WITH THE RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, all present and future rights, titles, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to the following property and any interest therein (collectively, the “**Trust Estate**”):

**1.1** The real property located in the County of Salt Lake, State of Utah, more particularly described in Exhibit “A” attached hereto (the “**Real Property**”);

**1.2** All buildings and other improvements and structures now or hereafter located on the Real Property (collectively, the “**Improvements**” and together with the Real Property shall sometimes be referred to as “**Property**”);

**1.3** All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a “**Lease**”, and collectively, the “**Leases**”);

1.4 All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property, including, without limitation, cash or security deposited under any of the Leases to secure the performance by the lessees of their obligations thereunder (collectively, the “**Rents**”);

1.5 All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or any interest therein (and any greater estate in the Property now owned or hereafter acquired by Trustor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property, including, without limitation, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights, oil, gas or other mineral rights and all royalty, leasehold and other rights of Trustor pertaining thereto;

1.6 All water and water rights pertaining to the Real Property, and shares of stock evidencing the same, and all deposits made with, or other security given to utility companies by Trustor with respect to the Property;

1.7 All policies of insurance and all claims, demands or proceeds relating to such insurance or condemnation awards, recoveries or settlements which Trustor now has or may hereafter acquire with respect to the Property, including all advance payments of insurance premiums made by Trustor with respect thereto;

1.8 All inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other articles of personal property, which are now or hereafter owned by Trustor and located at, placed upon or about, or affixed or attached to or installed in or on the Property or any part thereof, and used or to be used in connection with or otherwise relating to the Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy thereof, and all accessories, attachments, parts, or repairs of or to any of such property;

1.9 All (a) accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificates of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate, (b) refunds, rebates, reserves, deferred payments, deposits, cost savings and payments of any kind due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (individually, a “**Governmental Agency**”), or (ii) any insurance or utility company, in either case relating to any or all of the Trust Estate, (c) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Trustor with respect to or upon any or all of the Trust Estate, (d) cash collateral accounts maintained pursuant to any of the Loan Documents (as defined below), and (e) any amounts owing from Beneficiary to Trustor under any interest rate swap or similar agreement heretofore or hereafter entered into between Trustor and Beneficiary; and

**1.10** All supporting obligations for, additions, accessions, improvements, and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing.

**2. SECURED OBLIGATIONS.** Trustor makes this grant and assignment for the purpose of securing the following obligations (collectively, the “**Secured Obligations**”):

**2.1** Payment of indebtedness and all sums at any time owing and all other lawful charges evidenced by that certain Revolving Line of Credit Note, dated March 1, 2022, in the original principal amount of \$75,000,000.00 made by Trustor and payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth (the “**Note**”) and any extensions and/or renewals, amendments, or modifications thereof;

**2.2** The performance of all other covenants and obligations of Trustor under that certain Revolving Line of Credit Agreement, dated March 1, 2022 and entered into by and between Trustor and Beneficiary (as amended, the “**Loan Agreement**”) and all other documents entered into by and between Trustor and Beneficiary as set forth therein;

**2.3** Payment to Beneficiary of all future or additional advances which may be made by Beneficiary to or for the account of Trustor, together with interest on such advances (including, without limitation, all sums which Beneficiary may advance under this Trust Deed or the other loan documents incorporated into the Loan Agreement pursuant to Section 9.k. of the Loan Agreement with respect to the Property to pay for taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Property or the lien of this Trust Deed, and expenses incurred by Beneficiary by reason of default by Trustor under this Trust Deed);

**2.4** Payment of such additional sums as may be hereafter borrowed from Beneficiary by Trustor when evidenced by a debt instrument or instruments (or guaranty or guaranties, as the case may be) which are by the terms thereof (or by the terms of any other instrument executed by Trustor in connection therewith) secured by this Deed of Trust, together with interest and late charges thereon according to the terms of such debt instrument or instruments;

**2.5** Payment of all other sums, including late charges and any attorney’s fees and other advances made by Trustor hereunder as hereinafter provided, with interest thereon as hereinafter provided, which are due or payable to Trustee under the provisions hereof;

**2.6** All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note;

**2.7** The obligations of Trustor under any interest rate swap or similar agreement heretofore or hereafter entered between Trustor with respect to all or any part of the indebtedness now or hereafter secured hereby that is evidenced by one or more promissory notes, and any and all modifications, replacements, extensions and renewals thereof; and

**3. AFFIRMATIVE COVENANTS OF TRUSTOR AND TRUSTEE.** Trustee shall abide by the Duties and Prohibited Conduct set forth in the Utah Annotated Code §57-1-21.5, and Trustor hereby agrees as follows:

**3.1 Performance of Obligations.** To pay, perform, observe, and discharge each condition, obligation, covenant and agreement for which this Deed of Trust has been given as security as provided above.

**3.2 Maintenance, Repair and Alterations.** To keep the Trust Estate in good condition and repair; not to remove, demolish or substantially alter any of the Improvements without the prior written consent of Beneficiary; to notify Beneficiary in writing of any material damage or destruction to the Trust Estate or any portion thereof immediately upon Trustor obtaining knowledge of same, whether or not covered by insurance; to complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Real Property and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions (including, without limitation, the directives of any Governmental Agency) now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations, improvements or additions to be made thereon; not to commit or permit any waste or deterioration of the Trust Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to perform, in the event all or any portion of the Trust Estate constitutes a leasehold estate, each and every obligation of Trustor under the terms of the agreements creating such leasehold estate; and not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of any law, ordinance or regulation.

**3.3 Insurance**

**(a) Coverage.** To keep Improvements insured at all times against loss or damage with property hazard insurance in an amount at least equal to the full insurable value of the Improvements (including tenant improvements) on a replacement cost basis, as determined by Beneficiary (as such insurable value may change from time to time). Trustor shall also carry public liability insurance with coverage amounts as determined by Beneficiary (as such coverage amounts may change from time to time). All insurance policies shall (i) be in such form and with such endorsements as may be required by Beneficiary, (ii) provide a lender's loss payable endorsement or be endorsed with a standard non-contributory mortgage clause, as appropriate, in favor of Beneficiary, (iii) be underwritten by insurance providers acceptable to Beneficiary, and (iv) provide Beneficiary at least thirty (30) days' prior notice of cancellation, non-renewal or modification. Trustor shall pay premiums on such insurance as they become due and shall not permit any condition to exist on or with respect to the Property which would wholly or partially invalidate any insurance.

**(b) Application of Proceeds.** To pay to Beneficiary, promptly upon Trustor's receipt of same, any proceeds received by Trustor under any such insurance policy on account of any damage or destruction to the Improvements.

**3.4 Taxes.** To (a) pay prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and charges of any kind or nature whatsoever, which are imposed upon, assessed against or affect the Trust Estate or any part thereof, and (b) pay when due all encumbrances, charges or liens of any kind or nature whatsoever, which create or may create a lien upon the Trust Estate or any part thereof or any interest therein, whether prior and superior or subject and subordinate to the lien hereof.

**3.5 Condemnation.** Trustor, upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, shall immediately notify Beneficiary of such fact in writing. Beneficiary shall have the right, but not the obligation, to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Trustor's expense, and Trustor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Trustor may become entitled to on account of such proceedings shall be paid to Beneficiary.

**3.6 Actions Affecting Trust Estate.** To appear in and defend, at Trustor's expense, any action or proceeding purporting to affect the Trust Estate, the security hereof or the rights or powers of Beneficiary or Trustee hereunder; and to pay all costs and expenses incurred by Beneficiary or Trustee, including attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear and, in any suit, brought by Beneficiary to foreclose this Deed of Trust or to exercise the power of sale hereunder.

**3.7 Actions by Beneficiary to Preserve Trust Estate.** Should Trustor fail to perform any of its obligations under this Deed of Trust, then Beneficiary, in its discretion, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may make or do the same.

**3.8 Inspections.** Beneficiary, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or in any part of the Property for the purpose of (a) inspecting same, and (b) performing any of the acts it is authorized to perform hereunder or under the terms of this Deed of Trust, the Note, the Loan Agreement, any guaranty thereof and any other instrument or agreement given to evidence or further secure the payment and performance of any obligation secured hereby (collectively, the "**Loan Documents**"). In the case of a request to transfer the Trust Estate or any part thereof in accordance with the terms hereof, Trustor shall pay all appraisal fees and related expenses incurred by Beneficiary in evaluating such request.

**4. NEGATIVE COVENANTS OF TRUSTOR.** Trustor hereby agrees as follows:

**4.1 Other Financing.** Trustor shall not create or permit to continue in existence any mortgage, pledge, security interest, lien, charge, or encumbrance of any kind upon the Trust Estate or any part thereof or any interest therein except for: (a) the lien of this Deed of Trust, (b) liens for taxes and assessments not yet delinquent, and (c) such other liens or charges as are specifically approved in writing by Beneficiary. Trustor shall, at Trustor's expense, take all action necessary

to promptly secure releases of all liens and encumbrances which in the opinion of Beneficiary are or may be prior and superior to Beneficiary's security interest.

**4.2 Transfer of Trust Estate.** Trustor shall not, directly, or indirectly, sell, convey, assign, further encumber, transfer, alienate or otherwise dispose of the Trust Estate or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Beneficiary. Any consent by Beneficiary permitting a transaction otherwise prohibited under this Section shall not constitute a consent to or waiver of any right of Beneficiary to withhold its consent on any subsequent occasion to a transaction not otherwise permitted by the provisions hereof.

## **5. ASSIGNMENT OF RENTS AND PERFORMANCE OF LEASES.**

**5.1 Assignment of Rents and Leases.** Trustor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Trustor's right, title and interest in and to the Leases and the Rents; provided, however, that so long as no Event of Default (defined below) has occurred and is continuing, Trustor shall have the right under a license granted hereby to collect and receive all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance, operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Loan Documents, before using or applying such Rents for any other purpose. No Rents or such other income shall be distributed or paid to Trustor, unless such costs and expenses which are then due have been paid in full. Thereafter, so long as no Event of Default has occurred, the balance may be distributed to Trustor. If an Event of Default has occurred and is continuing, Trustor's right to collect and receive the Rents under the license granted hereby shall cease and the license shall be revoked automatically and, pursuant to the Section 7.2(a) below, Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. This is an absolute assignment and not an assignment for security only.

**5.2 Negative Covenants Regarding Leases.** Trustor shall not, without the prior written consent of Beneficiary, (a) cancel, terminate or consent to the surrender of any Lease, if the Property is used for commercial purposes, (b) modify or in any way alter the terms of any Lease, (c) release any lessee or guarantor from any obligations or conditions to be performed by any lessee or guarantor under any Lease, if the Property is used for commercial purposes, (d) collect any rent from any lessee for a period of more than one (1) month in advance, or (e) execute any further assignment of any of its right, title and interest in the Leases and the Rents.

**5.3 Affirmative Covenants Regarding Leases.** Trustor shall (a) observe, perform and discharge each and every obligation, term, covenant, condition and agreement of Trustor under the Leases, (b) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or guarantor thereof, (c) keep the Property leased at a good and sufficient rental and on such other terms and conditions as are reasonably acceptable to Beneficiary, (d) execute and deliver to Beneficiary upon demand, at any time and from time to time, any and all assignments and other instruments which Beneficiary may deem advisable to carry out the true purposes and intent of the assignment set forth in Section 5.1 above,

and (e) at the request of Beneficiary, cause any or all tenants under a Lease to execute a subordination, nondisturbance and attornment agreement and estoppel certificate in form and substance satisfactory to Beneficiary, if the Property is used for commercial purposes.

**6. SECURITY AGREEMENT.** This Deed of Trust shall constitute a security agreement as that term is used in the Uniform Commercial Code as adopted in the state in which the Property is located (the “UCC”) and Trustor hereby pledges and grants to Beneficiary, as additional collateral for the Secured Obligations, a security interest in all of the Trust Estate may be personal property (collectively, the “**Personal Property**”). Trustor shall procure any documents, including, without limitation, mortgagee or landlord waivers or subordination agreements, in form and substance satisfactory to Beneficiary, with respect to any and all Personal Property (or fixtures which are a part of the Trust Estate), deliver to Beneficiary any instrument, mark any chattel paper, give any notice and take any other actions which are necessary or desirable to perfect or to continue the perfection and priority of the security interest created hereunder, or to protect the Personal Property or fixtures against the rights, claims or interests of third parties, and to pay all costs incurred in connection therewith. Trustor hereby appoints Beneficiary as Trustor’s true attorney-in-fact, coupled with an interest, to perform (but without any obligation to do so) any of the foregoing acts should Trustor fail to do so, irrevocable until such time as the Secured Obligations have been indefeasibly satisfied, to be exercised from time to time and at any time by Beneficiary following an Event of Default hereunder. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor agrees that Beneficiary is, and shall be deemed to be, the “secured party” as that term is defined in the UCC, and Beneficiary shall have all of the rights and remedies of a secured party under the UCC as well as any and all other rights and remedies available at law or in equity. Trustor agrees not to change Trustor’s name or state of organization or residence without Beneficiary’s prior written consent.

**7. EVENTS OF DEFAULT AND REMEDIES.**

**7.1 Events of Default.** The occurrence of any “default” or “event of default” or misrepresentation under this Deed of Trust, any of the Loan Documents, or any other instrument or agreement secured hereby is referred to herein as an “**Event of Default.**”

**7.2 Remedies.** Upon the occurrence of any Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may, at its option:

**(a) Termination of License.** Terminate Trustor’s right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate. The entering upon and taking possession of all or any portion of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all

or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Failure of Beneficiary at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement of Beneficiary of the right to collect the same.

**(b) Appointment of Receiver.** As a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in this Deed of Trust and shall continue as such and exercise all such powers until the later of (i) the date of confirmation of sale of the Trust Estate, (ii) the disbursement of all proceeds of the Trust Estate collected by such receiver and the payment of all expenses incurred in connection therewith, and (iii) the termination of such receivership with the consent of Beneficiary or pursuant to an order by a court of competent jurisdiction.

**(c) UCC Remedies.** Exercise all remedies available to a secured party under the UCC in such order and in such manner as Beneficiary, in its sole discretion, may determine; provided, however, that the expenses of retaking, holding, preparing for sale or the like, shall include reasonable attorneys' fees and other expenses of Beneficiary and Trustee and be secured by this Deed of Trust.

**(d) Utah Annotated Code §57-1-31 Remedies.** Exercise all remedies available to a secured party under the Utah Annotated Code §57-1-31 in such order and in such manner as Beneficiary, in its sole discretion, may determine; provided, however, that the expenses of retaking, holding, preparing for sale or the like, shall include reasonable attorneys' fees and other expenses of Beneficiary and Trustee and be secured by this Deed of Trust.

**(e) Judicial Foreclosure of Deed of Trust.** Commence an action to foreclose this Deed of Trust as a mortgage, or specifically enforce any of the covenants hereof.

**(f) Power of Sale.** Deliver to Trustee a written declaration of default and demand for sale in accordance with Utah Code §57-1-24.3, and a written notice of default and election to cause Trustor's interest in the Trust Estate or any portion thereof to be sold, which notice Trustee or Beneficiary shall cause to be transmitted and recorded, if applicable, in accordance with governing law.

**(i)** Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published, and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been



given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustor hereby expressly waives any right which it may have to direct the order in which any of the Trust Estate may be sold when it consists of more than one lot or parcel, and such order of sale, whether in a single sale or in multiple sales held on different days or at different times, shall be at the sole discretion of Beneficiary. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so 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. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale to the extent permitted by law.

(ii) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title and attorneys' fees of Trustee and Beneficiary in connection with such sale, and subject to applicable law, Trustee shall apply, in the following priority, the proceeds of sale to payment of: (A) first, all sums expended under the terms hereof, not then repaid, with interest thereon according to the terms of the Note (B) second, all other sums then secured hereby, in such order of priority and in such proportion as Beneficiary in its sole discretion may elect, and (C) the remainder, if any, to the person or persons legally entitled thereto.

(iii) Subject to applicable law, Trustee may postpone the sale of all or any portion of the Trust Estate by public announcement at the time and place of such sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(g) **Other Remedies.** Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all, or any portion of the obligations secured hereby, or provided by law. Upon the occurrence of an Event of Default hereunder, Beneficiary may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Trust Estate and all or any portion of the Personal Property, and to exercise its rights under Section 6 above with respect to all or any portion of the Personal Property in accordance with the provisions of the UCC.

**7.3 Remedies Not Exclusive; Waiver.** No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or 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. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the

obligations secured hereby, Beneficiary, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Beneficiary may deem fit without waiving any rights with respect to such other security.

**8. INTENTIONALLY OMITTED.**

**9. INTENTIONALLY OMITTED.**

**10. MISCELLANEOUS.**

**10.1 Governing Law.** This Deed of Trust is to be governed and construed in accordance with the laws of the State of Utah.

**10.2 Severability.** In the event any one or more of the provisions contained in Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

**10.3 Amendment.** This Deed of Trust cannot be modified, waived, discharged, or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

**10.4 No Implied Waiver.** No waiver by Beneficiary of any default or breach by Trustor hereunder shall be implied from any omission by Beneficiary to act on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default identified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by Beneficiary to or of any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. No delay or omission of Trustee or Beneficiary in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Trustor and Beneficiary during the term hereof shall be deemed a waiver of or any way affect the right of Beneficiary to insist upon the performance by Trustor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

**10.5 Full Reconveyance.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

**10.6 Notices.** Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication (including communications by telegraph, telex or telecommunication facilities providing facsimile transmission) shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), or telegraphed, telexed or transmitted addressed to the address set forth herein. Any such notice if so mailed shall be deemed to have been received by the addressee on the third day following the date of such mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**10.7 Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**10.8 Successor Trustee.** Beneficiary acting alone may, from time to time, by written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Property is located, substitute a successor or successors to the Trustee named herein or acting hereunder.

**10.9 Successors and Assigns.** This Deed of Trust applies to and shall be binding on and enure to the benefit of all parties to this Deed of Trust and their respective successors and assigns.

**10.10 Interpretation.** In this Deed of Trust, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Deed of Trust.

**10.11 Joint and Several Liability.** All obligations of each Trustor hereunder shall be joint and several.

**10.12 Headings.** Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

**10.13 Waiver.** To the fullest extent permitted by law, Trustor waives the pleading of any statute of limitations as a defense to all obligations secured by this Deed of Trust.

**10.14 Merger.** No merger shall occur because of Beneficiary's acquiring any other estate in or any other lien on the Trust Estate unless Beneficiary consents to such merger in writing.

**10.15 In-House Counsel Fees.** Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated cost for the services of in-house counsel.

**10.16 Request for Notice.** Trustor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth herein or at such other address as Trustor may designate pursuant to this Section. That address is also the mailing address

of Trustor as debtor under the UCC. Beneficiary's address given herein is the address for Beneficiary as secured party under the UCC.

**10.17 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the UCC, as amended, or recodified from time to time, covering any portion of the Trust Estate which now is or later may become a fixture attached to the Property.

**10.18 Counterparts.** This Deed of Trust and each other Loan Document (other than the Note) may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

*[Signatures and Acknowledgment Follows]*



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

File No.: 1054828

LOT 104, DAYBREAK VILLAGE 11A PLAT 1 SUBDIVISION, AMENDING LOT Z101 OF THE VP DAYBREAK OPERATIONS-INVESTMENTS PLAT 1, AS AMENDING THE KENNECOTT DAYBREAK MASTER SUBDIVISION AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SALT LAKE COUNTY, UTAH.

Tax ID No.: 26-22-405-004