

WHEN RECORDED, MAIL TO:
Equity Trust Co. Custodian FBO, John Northrop Ellis BENE IRA of Mary E Ellis DCD
10383 S Millerton Dr.
South Jordan, UT 84009

ENT 156995 : 2021 PG 1 of 6
Andrea Allen
Utah County Recorder
2021 Sep 09 02:17 PM FEE 40.00 BY IP
RECORDED FOR GT Title Services
ELECTRONICALLY RECORDED

GT File No. SL45252C
Tax Parcel No.: 48-048-0038

DEED OF TRUST

(With Assignment of Rents, Security Agreement, and Fixture Filing)

THIS DEED OF TRUST, made effective as of **September 3, 2021**, is between **K. Richins Realty LLC**, a Utah **limited liability company** whose mailing address is **282 Willow Ct., Kamas, UT 84036**, as "Trustor," Griffiths & Turner / GT Title Services, Inc., a Utah title insurance agency whose mailing address is 5295 So. Commerce Dr., Suite 150, Salt Lake City, Utah 84107, as "Trustee," and **Equity Trust Co. Custodian FBO, John Northrop Ellis BENE IRA of Mary E Ellis DCD**, whose mailing address is **10383 S Millerton Dr., South Jordan, UT 84009**, as "Beneficiary."

WITNESSETH: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the certain real property situated in **UTAH** County, State of Utah, commonly known as **1395 NORTH 1500 EAST, PROVO, UT 84604**, and further described as follows (the "Property"):

ALL OF LOT 38, PLAT "L", OAK HILLS SUBDIVISION, PROVO, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF UTAH COUNTY, UTAH.

TOGETHER WITH all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING a payment of the indebtedness evidenced by (a) Secured Promissory Note of even date hereof in the principal amount of **\$75,000.00** (referred to hereinafter as the "Promissory Note") made by Trustor, payable to the order of Beneficiary at the time, in the manner and with interest as therein set forth, and any extensions, renewals, amendments or modifications thereof, together with interest thereon as therein provided, (b) the payment of such additional loans or advances as hereafter may be made to Trustor, or Trustor's successors or assigns, when evidenced by a promissory note or notes or loan instrument reciting that they are secured by this Deed of Trust; and (c) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided, and (d) the performance of Trustor's covenants and agreements under this Deed of Trust, and any and all other documents now or hereafter required by Beneficiary and executed by Trustor or any other person or party in connection with the loan evidenced by the Promissory Note (all such documents are sometimes referred to herein collectively as the "Loan Documents").

AND, Trustor hereby warrants, covenants and agrees that Trustor is the lawful owner of the Property, with good and marketable title, free and clear of all encumbrances, liens or charges, excepting only those matters currently of record.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

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1. **Preservation of the Property.** To keep the Property in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary to preserve the Property in good condition and repair. Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon pursuant to the provisions contained herein.

2. **Hazard or Property Insurance.** To provide and maintain 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, Trustor 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.

3. **Evidence of Title.** To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions, endorsements, or renewals thereof or supplements thereto.

4. **Defense of Actions Affecting the Property.** To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. **Taxes and Assessments.** To pay at least ten (10) days before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest on the Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Deed of Trust

6. **Hazardous Substances.** Not to cause, permit, allow or suffer the presence, use, generation, manufacture, release, discharge, storage or disposal of any hazardous or toxic materials, substances or wastes as designated or regulated by applicable federal, state or local environmental laws (collectively, "Hazardous Materials") on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property. Trustor shall immediately notify Beneficiary in writing of: (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened in connection with any Hazardous Materials; (b) any claim made or threatened by any third party against Trustee or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (c) Trustee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause all or any portion of the Property to be subject to any restrictions on the ownership, occupancy, transferability or use.

7. **Protection of Beneficiary's Rights in the Property.** Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay reasonable fees.

8. **Payments of Expenses.** To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate provided in the Promissory Note until paid, and the repayment thereof shall be secured hereby.

9. **Construction Related Matters.** If the Promissory Note or loan secured hereby or any part

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thereof is being obtained for the purpose of financing construction of improvements on or to the Property, Trustor agrees as follows: (a) to commence construction promptly and pursue the same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary; (b) to allow Beneficiary to inspect the Property at all times during construction; and (c) to furnish such mechanics' lien waivers/releases as Beneficiary may require.

10. **Further Assurances.** At any time, and from time to time, upon request of Beneficiary, Trustor will make, execute, and deliver, or will cause to be made, executed or delivered, to Beneficiary or to Beneficiary's designee, and when requested by Beneficiary, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Beneficiary may deem appropriate, any and all such mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Beneficiary, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under Loan Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Beneficiary agrees to the contrary in writing, Trustor shall reimburse Beneficiary for all costs and expenses incurred in connection with the matters referred to in this paragraph.

11. **Attorney-in-Fact.** If Trustor fails to do any of the things referred to in the preceding paragraph, Beneficiary may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

IT IS MUTUALLY AGREED THAT:

12. **Condemnation.** Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

13. **Consents; Subordination; Reconveyance.** At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Promissory Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or (d) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees and costs for any of the services mentioned in this paragraph, including, without limitation, reasonable fees to cover bank wire fees, county recording fees, and document preparation fees.

14. **No Further Encumbrances.** As an express condition of Beneficiary making the loan secured by this Deed of Trust, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Property or any interest therein nor cause or allow by operation of law the encumbrance of the Property or any interest therein without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Deed of Trust. Encumbrance of the Property contrary to the provisions of this Section without the express written consent of Beneficiary, shall constitute a default hereunder and at Beneficiary's option, Beneficiary may declare the entire balance of principal and interest secured hereby immediately due and payable, whether such default is created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect; provided that Beneficiary shall not exercise such option if such exercise is prohibited by applicable law.

15. **Due on Sale.** Other than a transfer by devise, descent or by operation of law upon the death of a

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joint tenant, Trustor shall not sell, convey or otherwise transfer the Property or any part thereof or interest therein, without the prior written consent of Beneficiary. If the Property, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Beneficiary, or if Trustor be divested of title to the Property, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full principal indebtedness of the Promissory Note and all other indebtedness secured hereby, at the option of Beneficiary and without demand or notice, shall immediately become due and payable; provided that Beneficiary shall not exercise such option if such exercise is prohibited by applicable law.

16. **Assignment of Rents.** As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the Property affected by this Deed of Trust and of any personal property located thereon. In addition, Trustor hereby grants a Uniform Commercial Code security interest in all such rents and profits of the Property. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such monies shall cease and Beneficiary shall have the right, with or without taking possession of the Property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option. Trustor agrees that it will not collect rent on the Property more than one month in advance or lease the Property other than on commercially reasonable terms.

17. **Possession and Collection of Rents.** Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

18. **Forbearance by Beneficiary Not a Waiver.** The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

19. **Possession or Collection of Rents Not a Waiver.** The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

20. **Default.** Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any obligation of Trustor under any of the Loan Documents, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee the Promissory Note and all documents evidencing expenditures secured hereby.

21. **Sale of Property Upon Default.** After the lapse of such time as may then be required by law following the recordation of said 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 said notice of sale, either as a whole or in separate parcels, and in such order as it 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 lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every 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 its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the 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 to

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payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps or recording fees on the Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at from date of expenditure as provided in the Promissory Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk or Court of the county in which the sale took place.

22. **Acceleration.** Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages or deeds of trusts on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court,

23. **Successor Trustee.** Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

24. **Successors and Assigns.** This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Deed of Trust, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

25. **Governing Law.** This Deed of Trust shall be construed according to the laws of the State of Utah.

26. **Notice of Default.** The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address hereinbefore set forth.

27. **Signing Authority.** The undersigned person executing this instrument on behalf of Trustor represents and certifies that he/she has been fully authorized and empowered, by proper action of the governing body of Grantor, to execute and deliver this instrument; that Trustor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and done. Each person signing this Deed of Trust on behalf of an entity or as a trustee of a trust represents and warrants that he or she has full power, authority and capacity to execute and deliver this instrument on behalf of such entity or trust and each such person represents and warrants this instrument has been duly authorized, executed and delivered by Trustor and constitutes the legal, valid and binding obligation of Trustor enforceable against Trustor in accordance with the terms hereof.

SECURITY AGREEMENT; FINANCING STATEMENTS

The following provisions related to this Deed of Trust as a security agreement are made part of this Deed of Trust:

28. **Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all the rights of a secured party under the Uniform Commercial Code as amended from time to time.

29. **Security Interest.** Upon request by Beneficiary, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the rents and any personal property. In addition to recording this Deed of trust in the county land records, Lender may, at any time, and without further authorization from Trustor, file executed counterparts, copies, or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever, or detach any personal property from the Property. Upon default, Trustor shall assemble any personal property not affixed to the Property in a manner and at a place reasonably convenient to Beneficiary and make it available to Beneficiary within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

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