

When Recorded Mail To:

Burgener Family Trust  
2717 North Iroquois Dr  
Provo, Ut 84604

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**Andrea Allen**  
**Utah County Recorder**  
2023 Jul 28 01:10 PM FEE 40.00 BY KR  
RECORDED FOR FNT Union Heights FNTIC - 1218 E 7800 South Ste  
ELECTRONICALLY RECORDED

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LOAN NO. AR5

## TRUST DEED

"WITH PROVISIONS FOR FUTURE ADVANCES"

THIS TRUST DEED, made this **27th** day of **July, 2023**,

AMONG **Curtis Garner and Jazmin Garner, husband and wife,**

as TRUSTOR,

whose address is **1014 East Searle Lane, Eagle Mountain, UT 84005,** and

**Fidelity National Title Insurance Agency,**

as TRUSTEE, and

**The Burgener Family Trust, dated June 28, 2000, O. Robert Burgener and Elaine W. Burgener, as Trustees** as

BENEFICIARY,

TRUSTOR, irrevocably grants and conveys and warrants to trustee, in trust, with power of sale, the following described property located in the county of **Utah**, State of Utah:

**Lot 5, AUTUMN RIDGE SUBDIVISION, PHASE 1, Eagle Mountain, according to the official plat thereof on file in the Office of the Utah County Recorder, State of Utah.**

The Property tax identification number is **34-456-0005**.

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 said 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 (1) payment of the indebtedness and all lawful charges evidenced by a promissory note of even date herewith, in the principal sum of **Four Hundred Thousand and no/100 Dollars (\$400,000.00)** made by Trustor, payable to the order of Beneficiary at all times, in the manner and with interest as therein set forth, and any extensions and/or renewals for modifications thereof; (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 his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed;** (4) the payment of such sum or sums of money as said trustor may at any time and from time to time in the future owe to trustee either on

account of bills and notes, for overdrafts, for renewal of notes, and upon any other obligation, whatsoever may be the nature of the same or howsoever the same may be contracted, together with the interest thereon upon such claims; (5) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

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

**1. PRESERVATION AND MAINTENANCE OF PROPERTY.**

To keep said 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 said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Trustor further agrees:

- (a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and
- (b) To allow Beneficiary to inspect said property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

**2. INSURANCE.**

To provide and maintain hazard insurance against such casualties as Beneficiary may require, in an amount, for such term, and in a company or companies satisfactory to Beneficiary with loss payable clauses in favor of and in a form satisfactory to Beneficiary. Beneficiary may make proof of loss and settle and adjust all claims thereunder, applying the proceeds at its option, to reduction of the amount due hereunder, or to the restoration or repair of the property damaged. Payment of such loss may be made directly to Beneficiary. In the event of the refusal or neglect of Trustor to provide insurance or to maintain such insurance and charge the cost thereof to Trustor under the provisions of paragraph 7 hereof. Beneficiary shall not be required to accept or approve any policy of insurance or any renewal of an existing policy, which is not delivered to it prior to 30 days before the expiration date of existing coverage even through the same may be otherwise satisfactory to beneficiary.

**3. TITLE EVIDENCE.**

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 extension or renewals thereof or supplements thereto.

**4. DEFENSE OF TITLE.**

To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said 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 attorney's 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 said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said 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 Trust.

**6. PAYMENT OF PRINCIPAL AND INTEREST.**

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 said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgement 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.

#### 7. REIMBURSEMENT OF EXPENDITURES.

To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate as provided for in said note until paid, and the repayment thereof shall be secured hereby.

#### 8. CONSENT REQUIRED TO TRANSFER TO AVOID DEFAULT.

Not to make any voluntary inter vivos transfer of the premises or any part thereof without first obtaining the written consent of the Beneficiary. Any such transfer, if the Beneficiary shall not so consent, shall constitute a default under the terms of this instrument and the note it secures, and Beneficiary may cause same to be foreclosed, and the premises sold, according to law and the provisions hereof.

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#### IT IS MUTUALLY AGREED THAT:

#### 9. CONDEMNATION.

Should said 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 said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including reasonable attorney's 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.

#### 10. BENEFICIARY'S RIGHTS TO REQUEST.

At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the 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, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said 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 the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

#### 11. RENTS, ROYALTIES, AND PROFITS.

As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. 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 moneys 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 moneys 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 Trust Deed to any such tenancy, lease or option.

#### 12. POSSESSION RIGHT UPON DEFAULT.

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, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said 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 attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

#### 13. POSSESSION NOT A WAIVER OF DEFAULT.

The entering upon and taking possession of said 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.

## 14. FORBEARANCE NOT A WAIVER.

The failure on the part of the 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 subsequent default.

## 15. TIME OF ESSENCE - NOTICE OF 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 agreement hereunder, 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 said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures hereby.

## 16. POWER OF SALE.

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 said 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 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; provided, if the sale is postponed for longer than one (1) day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said 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 purchase at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees actually incurred, by the Trustee and the Beneficiary but not to exceed ten (10) percent of the unpaid indebtedness at the time of such sale with the minimum total of said fees not to be less than \$250.00; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate provided for in the said note from the date of expenditure; (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 of the county in which the sale took place.

## 17. FORECLOSURE AS PROVIDED FOR MORTGAGES AT OPTION OF BENEFICIARY.

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 Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court. The purchaser of such real property at a sale under any Decree of Foreclosure shall be entitled to possession thereof, together with all rents and profits therefrom during any period of redemption.

## 18. APPOINTMENT OF SUCCESSOR TRUSTEE.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust Deed. 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 acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Trust Deed and its place of record, which, when recorded in the office of the County Recorder of the county or counties in which said property is situated, shall be conclusive proof of proper appointment of the successor Trustee. The foregoing power of substitution and the procedure therefore shall not be exclusive of the power and procedure provided for by law for the substitution of a Trustee or Trustees in the place of the Trustee or Trustees named herein.

## 19. SUCCESSORS AND ASSIGNS JOINT AND SEVERAL LIABILITY, CAPTIONS.

This Trust Deed 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 pledge of the note secured hereby. In this Trust Deed, whenever the text so requires, masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The captions and headings of the paragraphs of this Trust Deed are for convenience and are not to be used to interpret or define the provisions hereof.

20. ACCEPTANCE OF TRUST DEED BY TRUSTEE.

Trustee accepts this Trust when this Trust Deed, 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 Trust Deed or of any action in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

21. APPLICABLE LAW.

This Trust Deed shall be construed according to the laws of the State of Utah.

22. REQUEST FOR NOTICES.

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

Borrower has executed and acknowledges receipt of pages 1 through 5 of this Trust Deed.

Signature of Trustor:

Curtis Garner  
Curtis Garner

Jazmin Garner  
Jazmin Garner

State of Utah                    }  
  } ss.  
County of Salt Lake        }

On the 27<sup>th</sup> day of July, 2023, personally appeared before me **Curtis Garner and Jazmin Garner**, the signers of the above instrument, who duly acknowledged to me that they executed the same.

[Signature]

Notary Public

My commission expires: 11-19-24

