

Ent 500918 Bk 1357 Pg 258-263
Date: 25-MAY-2021 11:18:33AM
Fee: \$40.00 Check Filed By: HP
MARCY M MURRAY, Recorder
WASATCH COUNTY CORPORATION
For: HOLLAND & HART LLP

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:
Vogel Hill LLC
c/o Trident Partners
5950 Sherry Lane #550
Dallas, Texas 75225

SPACE ABOVE THIS LINE (3 1/2" X 5") FOR RECORDER'S USE

FOURTH DEED OF TRUST AND ASSIGNMENT OF RENTS

A.P.N.: 00-0015-9264
00-0015-9272
00-0015-9280
00-0015-9298
00-0013-9100
00-0013-9092

This Fourth Deed of Trust and Assignment of Rents ("Deed of Trust") is made April 26, 2021 between Highway 32 Land LLC, a Utah limited liability company, as TRUSTOR, whose address is 3255 W. 500 S. Salt Lake City, Utah 84101, First American Title Insurance Company National Commercial Services, as TRUSTEE, and Vogel Hill LLC and Trident Vogel Hill LLC, collectively, as BENEFICIARY,

Witnesses: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property, situated in Wasatch County, State of Utah:

**THE SOUTHEAST 1/4 AND THAT PORTION OF THE NORTHEAST 1/4 OF SECTION 4,
TOWNSHIP 3 SOUTH RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, LYING SOUTH OF THE
HIGHWAY**

**THE WESTERLY 190 FEET OF THE SOUTHWEST 1/4 AND THE WESTERLY 190 FEET OF THE
SOUTH 1/2 OF THE NORTHWEST 1/4, AND THE WEST 240 FEET OF LOT 4, SECTION 3,
TOWNSHIP 3 SOUTH RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, LYING SOUTH OF THE
HIGHWAY**

**LESS AND EXCEPTING THEREFROM ANY PORTION THEREOF LOCATED WITHIN THE BOUNDS
OF WASATCH COUNTY ROUTE A, AS DEEDED TO THE UNITED STATES OF AMERICA IN THAT
CERTAIN WRRANTY DEED RECORDED NOVEMBER 22, 1989 AS ENTRY NO. 150544 N BOOK
214 AT PAGE 1 OF OFFICIAL RECORDS**

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 evidenced by that certain promissory note dated October 21, 2016, in the principal sum of **\$150,000** made by Jamie Mackay, an affiliate of Trustor, payable to the order of Vogel Hill LLC at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof, including, but not limited to, the First Amendment to Memorandum of Understanding, Two \$150,000 Promissory Notes and a \$3,000,000 Promissory Note dated as of the date of this Deed of Trust (collectively, the "2016 Note"); (2) payment of the indebtedness evidenced by that certain promissory note dated August 29, 2017, in the principal sum of **\$150,000** made by Jamie Mackay, an affiliate of Trustor, payable to the order of Vogel Hill LLC at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof, including, but not limited to, the First Amendment to Memorandum of Understanding, Two \$150,000 Promissory Notes and a \$3,000,000 Promissory Note dated as of the date of this Deed of Trust (collectively, the "2017 Note"); (3) the payment of the indebtedness evidenced by that certain Amended and Restated Promissory Note as of the date of this Deed of Trust, in the principal sum of **\$3,000,000** made by Jamie Mackay, payable to the order of and Trident Vogel Hill LLC at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof (collectively, the "A&R Note"); (5) the performance of each agreement of Trustor herein contained; (6) 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 Deed of Trust; and (7) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided. The Trustor of this Deed of Trust represents and warrants to Beneficiary that Trustor (i) is a limited liability company that is wholly owned by Jamie Mackay, and (ii) has received sufficient consideration, because of such ownership and affiliate relationship, to grant this Deed of Trust, which secured the obligations stated above, including, but not limited to, the obligations of Jamie Mackay under the 2016 Note, the 2017 Note and the A&R Note.

To Protect the Security of This Deed of Trust, Trustor Agrees:

1. 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, to the extent that any construction is commenced on the property:

- (a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications reasonably 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. To provide and maintain insurance, of such type or types and amounts as Beneficiary may reasonably require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of any senior deed of trust beneficiary, to the extent there are any, and if not, then Beneficiary shall be loss payee. Such insurance shall be in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who, subject to the rights of any senior deed of trust beneficiary, 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 the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.

3. 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 or renewals thereof or supplements thereto.

4. 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 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. To pay at least 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. To pay all taxes and assessments affecting said property, and all premiums on insurance therefor, as and when the same shall become due.

7. Should Trustor fail to make any payment or 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 judgment of either appears to be prior or superior hereto; and in exercising 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 his reasonable fees.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of **3.5%** per annum until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

9. 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, subject to the rights of any senior deed of trust beneficiary, 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, but subject to the rights of any senior deed of trust beneficiary, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including 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. 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 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, and without releasing the interest of any party joining in this Deed of Trust, 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 Deed of Trust or the lien or charge thereof; (d) grant any extension or modification of the terms of this loan; (e) 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. As additional security, subject to the rights of any senior deed of trust beneficiary, Trustor hereby assigns to 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, subject to the rights of any senior deed of trust beneficiary. 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 subject to the rights of any senior deed of trust beneficiary. 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 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.

12. 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 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, subject to the rights of any senior deed of trust beneficiary.

13. 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 said 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. 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 or subsequent default.

15. 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 secured hereby.

16. 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 such time as may be required by law 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 of 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 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 attorney's fees; (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 **3.5%** per annum from 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. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

18. 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 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.

19. 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 said 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 the law.

20. 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 pledge, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

21. 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 brought by Trustee.

22. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE OF UTAH, THE LAW OF THE STATE OF WYOMING WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS DEED OF TRUST, THE 2016 NOTE, THE 2017 NOTE, THE A&R NOTE, AND ALL OTHER DOCUMENTS EVIDENCING OR SECURING SUCH NOTES, AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER.

23. 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.

24. There can be no liens placed on the described property without the consent of the Beneficiary, provided, however, that (i) Beneficiary acknowledges and agrees that this is a fourth priority Deed of Trust, subject to three prior deeds of trust, and (ii) inchoate liens for amounts not yet due and payable shall not be deemed to be a violation of this section. Trustor covenants with Beneficiary that Trustor

shall not seek any further advances under or to be secured by the three prior deeds of trust that exist as of the date of this Deed of Trust.

Highway 32 Land LLC, a Utah limited liability company

By: [Signature]
Name: Jamie Mackay
Title: Member

STATE OF Wyoming)
County of Teton)ss.

On April 28, 2021, before me, the undersigned Notary Public, personally appeared **Jamie Mackay**, as Member of Highway 32 Land LLC, a Utah limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

My Commission Expires:

Notary Public

