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Rhonda Francis Summit County Recorder

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By COTTONWOOD TITLE INSURANCE AGENCY, INC.

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AFTER RECORDING, PLEASE RETURN TO:

Jeffry R. Gittins

Smith Hartvigsen, PLLC

257 East 200 South, Suite 500

Salt Lake City, UT 84111

SCVC-13-16-130

161273-PCF

**DEED OF TRUST
AND
SECURITY AGREEMENT**

THIS DEED OF TRUST ("**Deed of Trust**") is executed to be effective this 29th day of November 2022, by and between **PN Land Company, LLC**, a Texas limited liability company ("**Trustor**"), in favor of **Jeffry R. Gittins**, a member of the Utah State Bar ("**Trustee**"), for the benefit of the **Prosperity Bank**, a Texas banking association, ("**Beneficiary**").

Grant in Trust: Upon the terms, covenants, and conditions set forth in this Deed of Trust, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, TRUSTOR HEREBY GRANTS TO BENEFICIARY A SECURITY INTEREST AND GRANTS, ASSIGNS, CONVEYS, TRANSFERS, AND WARRANTS TO TRUSTEE, IN TRUST, WITH THE POWER OF SALE AND WITH RIGHTS OF ENTRY AND POSSESSION, all rights, title, and interest which Trustor now has or may later acquire to the following described property:

Lot 130, SILVER CREEK VILLAGE CENTER LOT 13 & LOT 16 SUBDIVISION, according to the official plat thereof on file and of record in the office of the Summit County Recorder.

Parcel No. SCVC-13-16-130

(the "**Property**"), together with: (1) all right, title, interest, and estate of Trustor, now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to the Property or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims, and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property; (2) all right, title, interest, and estate of Trustor in and to all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property; and (3) all right, title, interest, and estate of Trustor in and to all sales proceeds, rents, sub-rents, issues, royalties, income, and profits of and from the Property.

ARTICLE I DEFINITIONS

Definitions. Unless the context clearly indicates otherwise, certain terms used in this Deed of Trust shall have the meanings set forth below:

“Condemnation Claims” shall mean all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Trustor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any condemnation of the Property or other taking of the Property for public or quasi-public use by eminent domain or to the transfer of the Property in lieu of condemnation or any such taking.

“Condemnation Proceeds” shall mean all proceeds of the Condemnation Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Condemnation Claims.

“Event of Default” shall mean the occurrence and continuance of any one of the events listed in Section 9.1 of this Deed of Trust.

“Impositions” shall mean all taxes, charges, and assessments, general and special, and all other taxes, assessments, and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever which are assessed or imposed upon the Trust Estate or become due and payable.

“Interest” shall mean the amount of interest payable by Trustor under the Note.

“Loan” shall mean the loan by Beneficiary to Trustor in the original principal amount of ONE MILLION TWENTY-TWO THOUSAND DOLLARS (\$1,022,000.00).

“Loan Documents” shall mean this Deed of Trust, the Note, and any and all other documents between Trustor and Beneficiary evidencing or securing the Loan.

“Note” shall mean the Real Estate Lien Note of even date herewith in the principal amount of ONE MILLION TWENTY-TWO THOUSAND DOLLARS (\$1,022,000.00), executed by Trustor, as borrower, and payable to the order of Beneficiary, as lender or creditor, to evidence the obligations of Trustor under the Loan.

“Obligations” shall mean the obligations of Trustor described in Section 2.1 of this Deed of Trust, the payment and performance of which are secured by this Deed of Trust.

“Trust Estate” shall mean all of the items, documents, interests, and properties referred to in Granting Clause of this Deed of Trust.

ARTICLE II

OBLIGATIONS SECURED

2.1 Obligations. This Deed of Trust is given for the purpose of securing the following Obligations of Trustor:

- (a) The payment and performance of each and every obligation of Trustor, evidenced by the Note, including, without limitation, the payment of principal of and Interest on the Loan.
- (b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust and the Note, and under any other instrument given to evidence or further secure the payment and performance of any obligation of Trustor under the Loan and any and all of the other Loan Documents.
- (c) The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Deed of Trust, together with Interest thereon as provided in this Deed of Trust, the Note, and all of the other Loan Documents.

2.2 Extensions and Renewals. Any extensions of, renewals of, modifications of, or additional advances of the Loan, or any of the Obligations evidenced by the Note, regardless of the extent or subject matter of any such extension, renewal, modification, or additional advance shall be secured by this Deed of Trust.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Trustor represents and warrants to Beneficiary as follows:

- (a) Trustor is the owner of fee simple title in and to the Property;
- (b) Trustor possesses all requisite power and authority to execute and deliver this Deed of Trust;
- (c) Trustor shall defend title to the Property against all claims and demands whatsoever;
- (d) The Property is free and clear of and from any and all liens, claims, encumbrances, restrictions, encroachments, and interests whatsoever, in favor of any third party;
- (e) The lien created by this Deed of Trust upon the Property is a valid and subsisting first position lien against the Trust Estate; and
- (f) Any and all obligations incurred by Trustor in connection with the acquisition of the Property are current and without default on the part of Trustor.

ARTICLE IV
MAINTENANCE OF TRUST ESTATE

Trustor shall perform all such actions as are necessary to maintain the ownership, validity, of the Property.

ARTICLE V
INDEMNIFICATION

If Beneficiary is made a party defendant to any litigation (except litigation wherein Trustor asserts a claim against Beneficiary and prevails) concerning this Deed of Trust or the Trust Estate or any part of the Trust Estate or interest therein, or the ownership thereof by Trustor, then Trustor shall indemnify, defend, and hold Beneficiary harmless from any and all liability by reason of such litigation, including reasonable attorney fees (and costs incurred by Beneficiary in any such litigation), whether or not the litigation is prosecuted to judgment. If, following the occurrence and continuance of an Event of Default, Beneficiary commences an action against Trustor to enforce any of the material terms, covenants, or conditions of this Deed of Trust or because of the breach by Trustor of any of the material terms, covenants, or conditions, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorney fees and costs in an amount equal to the amount of such fees and costs actually incurred by Beneficiary. The right to such attorney fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant, or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorney fees and costs in an amount equal to the amount of such fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Trustor by reason of such breach.

ARTICLE VI
IMPOSITIONS

6.1 Payment of Impositions. Subject to Section 6.3 of this Deed of Trust, Trustor shall pay, prior to delinquency, all Impositions. However, if, by law, any Imposition is payable in installments, or may at the election of the Trustor be paid in installments, Trustor may pay the same together with any accrued Interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, Interest, or cost may be added thereto for the nonpayment of any such installment and Interest.

6.2 Evidence of Payment. Trustor shall, upon request by Beneficiary, furnish to Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

6.3 Right to Contest. Trustor shall have the right, before any date set for forfeiture, whether at tax sale, foreclosure on a tax lien, or otherwise, to contest or object to the amount or validity of

any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in Section 6.1, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to contest or object to an Imposition, and unless, at Beneficiary's option:

- (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or
- (b) Trustor shall furnish good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

6.4 Tax on Deed of Trust. If at any time after the date hereof there shall be assessed or imposed: (a) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Trustor; or (b) a license fee, tax, or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments on the Note (whether principal or Interest); then all such taxes, assessments, and fees shall be deemed to be included within the term "Impositions" as defined in Article I of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits, or similar tax levied on Beneficiary or on the Obligations secured hereby.

6.5 Preservation of the Property. Trustor shall maintain the Property in good condition and repair; shall promptly complete and restore in a good and workmanlike manner any building and/or real property which may be damaged or destroyed; shall comply with all laws, Covenants and Restrictions affecting the Property, including all regulations and Insurance contract requirements; shall not commit or permit waste and shall not suffer, or permit any act upon the Property that violates any law or governmental restrictions; shall do all other acts, in a timely and proper manner, which from the character or use of the Property may be reasonably necessary or appropriate to preserve, protect, and maintain the value of the Property; and shall not abandon the Property. Trustee, upon presentation to it of a statement 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 hereunder.

6.6 Insurance. Trustor shall at all times maintain in full force (a) fire and extended coverage all risk insurance, (b) general liability insurance, and (c) title insurance. Each of the Insurance Policies, including the amounts, form, coverage, deductibles, insurer, and loss payable and cancellation provisions, shall be acceptable to Beneficiary. Without limiting any of the terms of this Section, (i) each of the Insurance Policies shall provide that it may be canceled or modified only upon not less than thirty (30) days prior written notice to Beneficiary and (ii) the general liability policy which Trustor is required to maintain shall name Beneficiary as an additional insured and shall be primary and noncontributing with any insurance maintained by Beneficiary.

6.7 Insurance Policies. By approving, disapproving, accepting, obtaining, or failing to obtain any Insurance Policies, Beneficiary shall not be liable or responsible for the suitability,

adequacy, enforceability, validity, amount, form, or content of any Insurance Policies, the solvency of any insurer, or the collection of any Insurance Proceeds, and Trustor shall at all times have full responsibility for all such matters. Neither Trustee nor Beneficiary shall be obligated to obtain or maintain any policy of insurance with respect to the Property.

6.8 Claims and Proceeds: Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceedings, or damaged by fire, earthquake, or in any other manner giving rise to any Condemnation Claims, Insurance Claims, or Property Claims (collectively, "**Claims**"), such Insurance Proceeds, Condemnation Proceeds, Property Proceeds (collectively, "**Proceeds**"), compensation, awards, and/or other payments or relief shall be placed in escrow by Trustor. In the event that any of the Proceeds are Condemnation Proceeds, Trustor shall assign such proceeds to Beneficiary, who may, after deducting therefrom all its expenses it expended in the Condemnation Proceeding, including attorney fees, apply the same to any Obligations secured hereby. To the extent that the Condemnation Proceeds exceed the amount of the Obligations, the balance of the Condemnation Proceeds shall be payable to the Trustor. In all other instances, the Proceeds shall be used by the Trustor solely to repair and/or restore the Property. If the Trustor determines, in its sole discretion, not to repair and/or restore the Property, such proceeds shall be assigned to Beneficiary, who may, after deducting therefrom all its expenses it expended in any Insurance or Property Claims, including attorney fees, apply the same to any Obligations secured hereby. To the extent that the Proceeds exceed the amount of Obligations, the balance of the Proceeds shall be payable to the Trustor. Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not (a) sell, transfer, pledge, hypothecate, or otherwise dispose of or abandon any or all of the Claims; or (b) compromise, adjust, settle, or dismiss any or all of the Claims.

ARTICLE VII

ADDITIONAL COVENANTS

7.1 Defense of Title. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. Should Beneficiary or Trustee elect in good faith to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee.

7.2 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without any obligation to do so, without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereunder, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof; (b) commence, appear in, and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either Beneficiary or Trustee appears to be superior to the lien of this Deed of Trust; and (d) in exercising any such powers, incur any liability and/or expend such reasonable amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such

amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Deed of Trust and shall accrue Interest in accordance with the terms of the Note.

7.3 Repayment of Advances. Trustor shall immediately repay to Beneficiary all sums, other than Loan proceeds, with Interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary to maintain this Deed of Trust as a prior, valid, and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair, or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with Interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

7.4 Further Assurance. Trustor shall execute and deliver to Beneficiary such further instruments, including, without limitation, Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may reasonably be required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and encumbrance created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Deed of Trust. Trustor hereby authorizes (to the extent such authorization is valid under applicable law) Beneficiary to execute and file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect or continue the perfection of the security interests created by this Deed of Trust.

7.5 No Further Encumbrances. Except for the liens and encumbrances of this Deed of Trust and the financing statements listing Trustor, as debtor, and Beneficiary, as secured party, executed and recorded in connection with the closing of the Loan, Trustor shall not create, permit, or suffer to exist, and, at Trustor's expense, will defend the Trust Estate and take such other action as is necessary to remove any lien, claim, charge, security interest, or encumbrance in or to the Trust Estate, or any portion of the Trust Estate.

7.6 No Conveyance of Trust Estate. Trustor shall not sell, convey, or alienate the Trust Estate or any portion thereof, or any interest therein to any person or entity, without the prior written consent of Beneficiary. In the event Trustor shall sell, convey, or alienate all or any portion of the Trust Estate, or any interest therein, in violation of the foregoing, or be divested of title to the Trust Estate in any manner, whether voluntarily or involuntarily, then the entire principal indebtedness of the Loan, as evidenced by the Note, and all other Obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without prior demand or notice, shall become immediately due and payable.

7.7 Application of Payments. If at any time during the term of this Deed of Trust Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Deed of Trust and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment, or sum, or any part

thereof, to such of the items or Obligations then due from Trustor or to Beneficiary as Beneficiary, in Beneficiary's sole discretion, may determine.

ARTICLE VIII

CONDEMNATION AWARDS

Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking relating to the Property. If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled: (1) to receive all compensation, awards, and other payments or relief for such taking or condemnation; (2) at Beneficiary's option and in Beneficiary's own name, to commence, appear in, and prosecute in Beneficiary's own name any action or proceeding relating to such taking or condemnation; and (3) to make any compromise or settlement in connection with any such taking or condemnation. All such compensation, awards, damages, causes of action, proceeds, or other payments shall be deemed part of the security for the Obligations and are hereby assigned to Beneficiary. Beneficiary, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees incurred by Beneficiary in connection with such compensation, shall apply any and all moneys so received by Beneficiary to restore or repair damage to the remaining Trust Estate, provided that any proceeds not so applied may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due). The application or release by Beneficiary of any condemnation awards or other compensation shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice. Subject to the foregoing, Trustor shall execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Beneficiary may from time to time require.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default. The occurrence and continuance of any one of the following shall constitute an Event of Default under this Deed of Trust:

- (a) Failure by Trustor to observe and perform any term, covenant, condition, or Obligation to be observed or performed by Trustor contained in this Deed of Trust, the Note, or any of the other Loan Documents.
- (b) Any representation or warranty of Trustor contained in this Deed of Trust, the Note, or any of the other Loan Documents was untrue when made.
- (c) A default by Trustor under the terms of any other promissory note, deed of trust, security agreement, undertaking, or arrangement between Trustor and Beneficiary now in existence or hereafter arising.

9.2 Notice. Unless otherwise expressly provided by the terms of this Deed of Trust, or the other Loan Documents, if an Event of Default shall occur, Beneficiary shall give written notice of such occurrence to Trustor as provided in the Note.

9.3 Acceleration; Notice. Upon the occurrence and continuance of an Event of Default, Beneficiary shall have the option, in addition to any other remedy Beneficiary may have under the Note, to declare by notice to Trustor all sums secured by this Deed of Trust immediately due and payable and elect to have the Trust Estate sold or possession retaken in the manner provided herein. In the event Beneficiary elects to sell or retake possession of the Trust Estate, Beneficiary shall execute or cause Trustee to execute a written notice of default and election to cause the Trust Estate to be sold or to have possession thereof retaken in order to satisfy the Obligations. Such notice shall be filed for record in Summit County, State of Utah.

9.4 Exercise of Power of Sale. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, except as provided by law, shall sell the Trust Estate, as a whole or in parcels, on the date and at the time and place designated in the notice of sale, 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 deemed expedient, postpone the sale of the whole or any part or parts thereof from time to time until it shall be completed. In every such case, notice, or 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 seventy-two (72) hours beyond the day designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed of any matters or facts relating to the exercise of the power of sale and the sale of the Trust Estate shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid and/or credit bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorney fees and costs; (b) all sums expended or advanced by Beneficiary in conjunction with any provisions of this Deed of Trust, not then repaid, with accrued Interest thereon from the date of expenditure, at the default rate of Interest provided in the Note; (c) all sums then secured by this Deed of Trust, including Interest and principal on the Note; and (d) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of Summit County, State of Utah.

9.5 Foreclosure as a Mortgage. If an Event of Default occurs and continues hereunder, Beneficiary shall have the option to 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 reasonable attorney fees and costs, in such amounts as shall be fixed by the court.

9.6 Receiver. If an Event of Default occurs and continues, Beneficiary, as a matter of right and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall

have the right upon notice to Trustor to apply to any court having jurisdiction over the subject matter to appoint a receiver or receivers of the Trust Estate. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and may exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

9.7 Entry and Possession. If an Event of Default occurs and continues, 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, may sue in their own name for or otherwise collect any and all 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 fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entry and taking possession of said Property, the collection of such rents, issues and, profits, and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

9.8 No Remedy Exclusive. No remedy conferred upon or reserved to Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust, the Note, or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof; but any such right and power may be exercised from time to time and as often as may be deemed expedient.

9.9 Cross Default. The occurrence and continuance of an Event of Default under this Deed of Trust, the Note, or any other Loan Document, or any other agreement or arrangement between Trustor and Beneficiary now existing or entered into hereafter shall constitute a default under all such documents, including, without limitation, this Deed of Trust, the Note, the other Loan Documents, as well as any other such agreement or arrangement.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Notices. Except as otherwise provided herein, all notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or on the fifth day following the day on which the same is deposited in the United States Mail, by registered or certified mail, postage prepaid, addressed as follows:

If to Trustor, to:

PN Land Company, LLC
2951 Marina Bay Dr., #130-120
League City, TX 77573

If to Beneficiary, to:

Prosperity Bank
1610 W. North Loop
Austin, TX 78756

If to Trustee, to:

Jeffrey R. Gittins
Smith Hartvigsen, PLLC
257 East 200 South, Suite 500
Salt Lake City, UT 84111

Such addresses may be changed by notice to the other parties in the same manner as above provided.

10.2 Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative, or unenforceable to any extent whatsoever.

10.3 Amendments, Changes, and Modifications. This Deed of Trust may not be amended, changed, modified, altered, or terminated without the prior written consent of both Beneficiary and Trustor.

10.4 Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah.

10.5 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article and section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

10.6 Binding Effect. This Deed of Trust shall be binding upon shall inure to the benefit of the respective successors and assigns of Beneficiary and Trustor.

10.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of the undertakings, agreements, or covenants contained in this Deed of Trust shall not waive, affect, or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

10.8 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 Trust Estate or some part thereof is situated a substitution of trustee. From the time the substitution is filed of record, the new Trustee shall succeed to all the powers, duties, authority, and title of the Trustee named

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Deed of Trust and Security Agreement - Page 12 of 12

EXHIBIT A
PROPERTY DESCRIPTION

Lot 130, SILVER CREEK VILLAGE CENTER LOT 13 & LOT 16 SUBDIVISION, according to the official plat thereof on file and of record in the office of the Summit County Recorder.

Tax Id No.: SCVC-13-16-130