

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Ballard Spahr LLP  
1225 17<sup>th</sup> Street, Suite 2300  
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Attention: Alicia B. Clark

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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

APN: 21-19-100-031, 21-19-100-032 and 21-19-100-033

*CT-148238-CAT*

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**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

by

**DAAT REALTY (DESERT PEAK LOGISTICS UT) LP,**  
a Delaware limited partnership,

as grantor

to

**COTTONWOOD TITLE INSURANCE AGENCY, INC.**  
a Utah corporation,

as trustee

for the benefit of

**MSSDF REIT LLC,**  
a Delaware limited liability company,

as beneficiary

Dated: As of December 20, 2022

Location: 4687 and 4701 West 6200 South  
6306 South Airport Road  
West Jordan, Salt Lake County, Utah 84118

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this “**Security Instrument**”), dated as of December 20, 2022, is made by **DAAT REALTY (DESERT PEAK LOGISTICS UT) LP**, a Delaware limited partnership having an address of 17304 Preston Road, Suite 550, Dallas, Texas 75252 (“**Borrower**”), as grantor, to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation, having an address at 1996 East 6400 South, Suite 120, Murray, Utah 84121 (“**Trustee**”), as trustee, for the benefit of **MSSDF REIT LLC**, a Delaware limited liability company, having an address of c/o NYL Investors LLC, 51 Madison Avenue, New York, New York 10010-1603 (together with its successors and assigns, “**Lender**”), as beneficiary.

**RECITALS**

**WHEREAS**, Borrower and Lender are parties to a Loan Agreement of even date herewith (said Loan Agreement, as modified and supplemented and in effect from time to time, the “**Loan Agreement**”), which Loan Agreement provides for a loan in the maximum principal amount of \$52,615,000.00 (the “**Loan**”) to be made by Lender to Borrower; and

**WHEREAS**, it is a condition to the obligation of Lender to extend credit to Borrower pursuant to the Loan Agreement that Borrower execute and deliver this Security Instrument.

**GRANT**

**NOW, THEREFORE**, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and for the purpose of securing the payment and performance of the following (collectively, the “**Loan Obligations**”): (a) all principal (including, without limitation, any advance to Borrower now or hereafter made), interest thereon and all other sums due and/or payable, and all obligations owing by Borrower, under any Loan Document and amendments, modifications, extensions, substitutions, exchanges and renewals thereof (each of which shall enjoy the same priority as the advance made on the Closing Date as evidenced by the Note); and (b) all covenants, agreements and other obligations of Borrower under the Loan Documents;

Borrower hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, grants, transfers, mortgages, pledges, sets over and confirms unto Lender and Trustee, their respective successors and assigns, to have and to hold forever for the security and benefit of Lender and its successors and assigns, **IN TRUST, WITH POWER OF SALE**, to secure payment to Lender of the Indebtedness at the time and in the manner provided for its payment in the Note and the Loan Agreement, all of Borrower’s right, title and interest in and to the following property, rights, interests and estates, now existing or hereafter coming into existence (the property, rights, interests and estates hereinafter described are collectively referred to herein as the “**Property**”): (i) the land located in the County and State described on Exhibit A (the “**Land**”), (ii) the Accounts, (iii) the Account Collateral, (iv) the Appurtenant Rights, (v) the Contracts, (vi) the Equipment, (vii) the Improvements, (viii) the Instruments, (ix) the Inventory, (x) the General Intangibles,

(xi) the Leases, (xii) the Permits (to the fullest extent assignable), (xiii) the Rents, (xiv) the Proceeds, (xv) the Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper), Commercial Tort Claims, Deposit Accounts, Documents, Goods, Investment Property, Letter of Credit Rights, Payment Intangibles and Supporting Obligations (as all such terms in this clause (xv) are defined in the UCC), and (xvi) all proceeds of the foregoing and any and all other rights of Borrower in and to the items set forth in clauses (i) through (xv) above, all whether now owned or hereafter acquired, and all other property which is or hereafter may become subject to a Lien in favor of Lender pursuant to any Loan Document.

**TO HAVE AND TO HOLD** the Property and all parts thereof unto and to the use and benefit of Lender, Trustee, and for their successors and assigns forever;

**IN TRUST, WITH POWER OF SALE**, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note, the Loan Agreement, and in this Security Instrument.

**PROVIDED, HOWEVER**, that these presents are upon the express condition that, if Borrower shall pay or cause to be paid to Lender all sums due Lender with respect to the Loan under the Loan Documents and keep, perform and observe all the covenants and promises in each of the Loan Documents, all without fraud and delay, then this Security Instrument, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void; otherwise the same shall remain in full force and effect.

**TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS:**

## **ARTICLE 1**

### **DEFINITIONS**

Section 1.1 **Certain Defined Terms**. For all purposes of this Security Instrument, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement or the Note, as applicable, unless defined herein, and:

“**Account Collateral**” means the Reserve Accounts, together with all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Reserve Accounts, all interest, dividends, cash, instruments, investment property and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing.

“**Accounts**” means all of Borrower’s “accounts,” as such term is defined in the UCC.

“**Appurtenant Rights**” means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and, to the extent now or hereafter owned by Borrower, all minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used in connection with, or located on, under or above the

Land or any part or parcel thereof, and all “as extracted collateral” (as defined in the UCC), and all ground leases, subleases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof.

“**Causes of Action**” means, all causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan.

“**Condemnation Awards**” means, all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property.

“**Contracts**” means, collectively, (a) all contracts between Borrower and third parties in connection with the management, construction, repair, renovation, use, operation or maintenance of the Property, in each case as the same may thereafter from time to time be amended or modified; and (b) all warranties, guarantees, and other rights of Borrower or Manager, direct and indirect, against manufacturers, dealers, suppliers, and others in connection with the above contracts and agreements or the work done or to be done and the materials supplied or to be supplied to or for the Property.

“**Equipment**” means all of Borrower’s “equipment,” as such term is defined in the UCC, and, to the extent not included in such definition, all fixtures, appliances, machinery, “software” (as defined in the UCC), furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired by Borrower, including without limitation, all beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, electronic data-processing or other office equipment, lamps, glassware, restaurant and kitchen equipment, and building equipment, including, without limitation, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Borrower wherever located, any portion thereof or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing.

**“General Intangibles”** means all of Borrower’s “general intangibles,” as such term is defined in the UCC, and, to the extent not included in such definition, all intangible personal property now owned or hereafter acquired by Borrower (other than Accounts, Rents, Instruments, Inventory, money and Permits and any confidential or proprietary information of Borrower), including, without limitation, choses in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of money, copyrights, trademarks, trade names, service marks, trade secrets, and patents, the goodwill associated with any of the foregoing, and all applications for any of the foregoing, in each case whether now existing or hereafter in existence.

**“Improvements”** means all buildings, structures and improvements now or hereafter located on the Land, including, but not limited to, all machinery, apparatus, equipment and fixtures attached to, or used or procured for use in connection with the operation or maintenance of, any Improvement, all refrigerators, shades, awnings, venetian blinds, screens, screen doors, storm doors, storm windows, stoves, ranges, curtain fixtures, partitions, attached floor coverings and fixtures, apparatus, equipment or articles used to supply sprinkler protection and waste removal, laundry equipment, furniture, furnishings, appliances, office equipment, elevators, escalators, tanks, dynamos, motors, generators, switchboards, communication equipment, electrical equipment, television and radio systems, heating, plumbing, lifting and ventilating apparatus, air cooling and air conditioning apparatus, gas and electric fixtures, fittings and machinery and all other personal property and equipment of every kind and description, excluding trade fixtures and personal property of any lessee or the property manager, unless such trade fixtures or personal property become the property of Borrower upon expiration or termination of the term of the lease or management agreement in question, and all accessions, renewals and replacements thereof and all articles in substitution therefor.

**“Instruments”** means all of Borrower’s “instruments,” as such term is defined in the UCC, and, to the extent not included in such definition, all instruments, chattel paper, documents or other writings obtained by Borrower from or in connection with the ownership or operation of the Property evidencing a right to the payment of money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by Borrower or in which Borrower has or acquires an interest pertaining to the foregoing.

**“Insurance Proceeds”** means all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property.

**“Inventory”** means all of Borrower’s “inventory,” as such term is defined in the UCC.

**“Leases”** means all leases and other agreements or arrangements affecting the use or occupancy of all or any portion of the Property now in effect or hereafter entered into

(including all lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same.

**“Permits”** means all licenses, registrations, permits, allocations, filings, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Property, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the ownership, construction, operation, renovation, use or occupancy of the Property.

**“Proceeds”** means all of Borrower’s “proceeds” as such term is defined in the UCC and, to the extent not included in such definition, all proceeds, whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance Proceeds and Condemnation Proceeds), from the Security Interest Property, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Security Interest Property and all income, gain, credit, distributions and similar items from or with respect to the Security Interest Property.

**“Rents”** means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, revenues, issues registration fees, if any and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and all other payments, rights and benefits of whatever nature from time to time due under the Leases.

**“Security Interest Property”** has the meaning provided in Article 5.

**“Tax Certiorari”** means all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction.

**“UCC”** means the Uniform Commercial Code in effect in the jurisdiction in which the Property or any of the Security Interest Property is located, as applicable.

Section 1.2 **Interpretation of Defined Terms.** Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined. All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor. The word “Trustee” shall mean “Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument.”

## ARTICLE 2

### COVENANTS AND AGREEMENTS OF BORROWER

Section 2.1 **Payment of Secured Loan Obligations; Incorporation by Reference.** Borrower shall pay when due the principal, interest thereon and all other sums, charges, fees and other Loan Obligations due and/or payable under any Loan Document all in accordance with the Loan Documents. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 2.2 **Duty to Defend; Filing; Re-Filing; Etc.**

(a) Borrower will forever defend the title to the Property and the validity and priority of the lien or estate hereof against the claims and demands of all Persons whomsoever, subject to any liens or encumbrances expressly permitted pursuant to the provisions of the Loan Agreement or otherwise approved in writing by Lender.

(b) Borrower shall execute, acknowledge and deliver, from time to time, such further instruments as Lender may reasonably require to confirm and perfect the liens created by this Security Instrument. Borrower hereby irrevocably authorizes and appoints Lender as its attorney-in-fact, coupled with an interest, for the purpose of confirming and perfecting the liens created by this Security Instrument and exercising any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Security Instrument.

(c) Borrower shall pay all intangible taxes, recording taxes, filing, registration and recording fees, all refiling, re-registration and re-recording fees, and all other expenses incident to the execution, filing, recording and acknowledgment of this Security Instrument, any security agreement, mortgage, modification or amendment supplemental hereto and any document, instrument and agreement of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of the execution, delivery, filing, registration and recording of the Note, this Security Instrument or any of the other Loan Documents, any security agreement or mortgage modification or amendment supplemental hereto or any document instrument or agreement of further assurance.

(d) Borrower hereby indemnifies and holds Lender harmless from any sales or use tax that may be imposed on Lender by virtue of the Loan, other than taxes imposed on the income, stock or assets of Lender.

(e) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for

a defense of usury, then Lender shall have the option, exercisable by written notice of not less than one hundred twenty (120) days to declare the Indebtedness immediately due and payable.

(f) Borrower will not claim or demand or be entitled to any credit or credits on account of the Indebtedness for any part of the Impositions assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Indebtedness. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than one hundred twenty (120), to declare the Indebtedness immediately due and payable.

(g) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Loan Agreement, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 2.3 **No Transfer.** Borrower shall not and shall not cause, allow, or permit, and shall prevent from occurring, a Transfer, except as expressly permitted pursuant to the Loan Agreement, including any Permitted Transfer. In the event of any violation of this Section 2.3, Lender may (or acting through Trustee may), at its option, declare an Event of Default, accelerate and declare the outstanding Indebtedness immediately due and payable, without notice or demand, and whether or not Lender (or Trustee) shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any Loan Document with respect to any Property or all or any portion of the Security Interest Property.

### **ARTICLE 3**

#### **ASSIGNMENT OF LEASES AND RENTS**

Borrower hereby absolutely and unconditionally assigns to Lender and Trustee all of Borrower's right, title and interest in all current and future Leases and Rents, it being intended that this Security Instrument constitute a present, absolute assignment and not an assignment for additional security only. This Article 3 presently gives Lender (and Trustee) the right to collect Rents and to apply Rents in partial payment of the Loan Obligations and otherwise in accordance with the Loan Agreement. Borrower intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Security Instrument, property of Borrower or Borrower's estate, as defined by 11 U.S.C. §541. If any law exists requiring Lender to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Lender to "perfect" or "activate" the rights and remedies of Lender as provided herein, Borrower waives the benefit of such law. Such assignment to Lender shall not be construed to bind Lender to perform any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender, and notwithstanding this Security Instrument, Borrower shall remain liable for any obligations undertaken by Borrower pursuant to any Lease. Subject to the terms of this Article 3 and the Loan Agreement, Lender grants to Borrower a license, revocable as hereinafter provided, to operate and manage the Property and to



collect and use the Rents. If an Event of Default occurs (except for any Event of Default described in Section 8.1(h) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Borrower herein may, at Lender's election, be revoked by Lender, and Lender shall immediately be entitled to possession of all Rents then or thereafter payable (including Rents past due and unpaid) whether or not Lender enters upon or takes control of the Property. Any Rents collected by Borrower from and after the date on which an Event of Default occurred and is continuing shall be applied in accordance with the terms of the Cash Management Agreement, and until so applied, shall be held by Borrower in trust for Lender. Borrower hereby grants and assigns to Lender and Trustee the right, at Lender's option, upon revocation of the license granted herein as the result of the occurrence of an Event of Default, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking the actual possession of the Property or any equivalent action. Lender may apply any Rents collected after the license granted herein is revoked in Lender's sole and absolute discretion as the result of the occurrence of an Event of Default to pay the Loan Obligations in such order and in such manner as Lender shall elect.

#### **ARTICLE 4**

#### **ASSIGNMENT OF CONTRACTS**

Borrower hereby absolutely and unconditionally assigns to Lender and Trustee all of Borrower's right, title and interest in and to the Contracts to the maximum extent allowable under all Legal Requirements and to the maximum extent allowable under the terms of each individual Contract, it being intended that this assignment be an absolute assignment from Borrower to Lender and Trustee and not merely the granting of a security interest. Until the occurrence of an Event of Default, Borrower may retain, use and enjoy the benefits of the Contracts. Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 8.1(h) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license described in the preceding sentence shall, upon Lender's election, be automatically revoked, and Lender may (or acting through Trustee may) elect to exercise any and all of Lender's rights and remedies hereunder.

#### **ARTICLE 5**

#### **SECURITY AGREEMENT AND FIXTURE FILING**

As additional security, Borrower, as debtor, hereby grants to Lender and Trustee, as secured party, a continuing security interest in the portion of the Property which is or may be subject to the provisions of the UCC which are applicable to secured transactions, and in any property as to which a security interest can be created or perfected, now existing or hereafter coming into existence, and all substitutions, replacements, renewals and additions to and all products and Proceeds of the foregoing (collectively, the "**Security Interest Property**"). This Security Instrument is intended to be and shall be effective as a security agreement and "fixture filing" under the UCC or other law applicable to the creation of liens on and security interests in personal property and fixtures. As further security for the payment and performance of the Loan Obligations, this Security Instrument shall constitute a financing statement under the UCC with

Borrower, as debtor, and Lender, as secured party. To the extent permitted by law, Borrower hereby authorizes Lender to file financing and continuation statements necessary to continue the lien of and security interest evidenced by this Security Instrument with respect to the Security Interest Property (and confirms that Lender is a person entitled to file a record, and that Borrower has authorized all such filings, within the meaning of Section 9-509 of the UCC). The principal places of business and mailing addresses of Borrower, as debtor, and Lender, as secured party, respectively, are as set forth on page one hereof. Borrower's location, for purposes of Section 9-307 of the UCC, is Borrower's state of formation/incorporation/organization as set forth on page 1 hereof. Information relative to the security interest created hereby may be obtained by application to Lender.

## **ARTICLE 6**

### **REMEDIES**

Section 6.1 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Indebtedness and all other Loan Obligations shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right. Borrower hereby expressly waives presentment, demand for payment, notice of protest, notice of dishonor, notice of intent to accelerate the maturity of the Indebtedness and notice of acceleration of the maturity of the Indebtedness. Notwithstanding anything contained to the contrary herein, the Indebtedness shall be accelerated and immediately due and payable, without any election by Lender or Trustee, upon the occurrence of an Event of Default described in Section 8.1(h) of the Loan Agreement.

Section 6.2 **Default Remedies.**

(a) If an Event of Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and Lender may (or acting through Trustee may) exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Lender may (or acting through Trustee may), personally or by their agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Property or any part thereof, exclude Borrower and all Persons claiming under Borrower whose claims are junior to this Security Instrument, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Borrower or otherwise as Lender shall deem best, and upon such entry, from time to time at the expense of Borrower and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Lender may reasonably deem proper and, whether or not Lender has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that Lender or Trustee may be authorized to make under this Security Instrument, the remainder to be applied to

the payment of the Loan Obligations until the same shall have been repaid in full, take possession of all security deposits held with respect to the Property, whether or not Lender enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located; if Lender demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(ii) effect new Permits and Contracts; amend, alter, renew, cancel or surrender existing Permits and Contracts; and make concessions to the Governmental Authorities, the contractors, warrantors and others;

(iii) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property or any part thereof, or cause the Property or any part thereof to be sold at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner and in such order as may be required by law, or, in the absence of any such requirements, as Lender may deem appropriate and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(iv) proceed to protect and enforce Lender's rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Security Instrument (as a mortgage or otherwise) and the sale of the Property or any part thereof under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as Lender shall elect, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on, and security interest in, the remaining portion of the Property; and

(v) exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property and exclude therefrom Borrower and all Persons claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Security Interest Property, or any part thereof; if Lender demands or attempts to take possession of the Security Interest Property in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(2) without further notice to or demand upon Borrower (except those otherwise required hereby or by the Loan Agreement), make such payments and do such acts as Lender may deem necessary to protect its security interest in the Security Interest Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith, which expenses shall thereafter become part of the Loan Obligations secured by the lien of this Security Instrument;

(3) require Borrower to assemble the Security Interest Property or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly to deliver the Security Interest Property to Lender, or an agent or representative designated by Lender, and its agents and representatives, shall have the right to enter upon the premises and property of Borrower to exercise Lender's rights hereunder;

(4) sell, lease or otherwise dispose of the Security Interest Property, with or without having the Security Interest Property at the place of sale, and upon such terms and in such manner as Lender may determine (and Lender may be a purchaser at any such sale, provided, however, that Lender may dispose of the Security Interest Property in accordance with Lender's rights and remedies in respect of the Property pursuant to the provisions of this Security Instrument in lieu of proceeding under the UCC); and

(5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender, as the case may be, shall give Borrower at least ten (10) days prior notice of the time and place of any sale of the Security Interest Property or other intended disposition thereof, which notice Borrower agrees is commercially reasonable.

(b) If an Event of Default shall have occurred, Lender, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of Borrower. Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(c) In any sale under any provision of this Security Instrument or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Lender may elect,

without regard to the right of Borrower or any Person claiming under Borrower to the marshalling of assets. The purchaser at any such sale shall take title to the Property or the part thereof so sold free and discharged of the estate of Borrower therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Upon the completion of any such sale by virtue of this Section 6.2(c), Lender shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of Borrower's estate, right, title, interest, property, claim and demand in and to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of Lender, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Security Instrument, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Borrower in, to and under the Property, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all Persons claiming or who may claim the same, or any part thereof, by, through or under Borrower. The powers and agency herein granted are coupled with an interest and are irrevocable.

(d) All rights of action under any Loan Document may be enforced by Lender without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

Section 6.3 **Application of Proceeds.**

(a) Except as expressly provided to the contrary in any of the Loan Documents, all proceeds of any repayment of or recoveries on the Loan shall be applied to pay the Indebtedness in such order and in such manner as Lender shall elect in Lender's sole discretion.

(b) No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Borrower of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Borrower shall remain liable for any deficiency subject to Section 7.11.

(c) Upon any sale made under the powers of sale herein granted and conferred, the receipt given by Lender will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and their heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Lender, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

Section 6.4 **Right to Sue.** Lender shall have the right from time to time to sue for any sums required to be paid by Borrower under the terms of this Security Instrument as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Lender thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 6.5 **Powers of Lender.** Lender may (or acting through Trustee may) at any time or from time to time renew or extend this Security Instrument or (with the agreement of Borrower) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any Person liable therefor, as Lender may determine without the consent of any junior lien or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Security Instrument on or in any part of the Property, and without affecting the liability of any other Person liable for any of the Loan Obligations.

Section 6.6 **Remedies Cumulative.**

(a) No right or remedy herein conferred upon or reserved to Lender (or Trustee) is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Security Instrument, or under applicable law, whether now or hereafter existing; the failure of Lender (or Trustee) to insist at any time upon the strict observance or performance of any of the provisions of this Security Instrument or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) To the maximum extent permitted by law, Lender shall be entitled to enforce payment and performance of any of the obligations of Borrower and to exercise all rights and powers under this Security Instrument or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being stipulated that Lender shall be entitled to enforce this Security Instrument and any other security now or hereafter held by Lender in such order and manner as Lender, in its sole discretion, may determine; every power or remedy given by any Loan Documents to Lender, or to which Lender is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and Lender may pursue inconsistent remedies.

Section 6.7 **Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption.** To the maximum extent permitted by law, Borrower shall not at any time insist upon, or plead, or

in any manner whatsoever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Security Instrument; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2; and Borrower, to the maximum extent permitted by law, hereby waives all benefit or advantage of any such law or laws. Borrower, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Security Instrument and (if an Event of Default shall have occurred) all notice or notices of seizure, and all right to have the Property marshalled upon any foreclosure hereof. Lender shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Property, and Borrower hereby waives any right or claim of right to have Lender proceed in any particular order.

Section 6.8 **No Assumption by Lender.** Except as otherwise expressly set forth in any Loan Document, Lender will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Borrower agrees that the exercise by Lender (or Trustee) of one or more of its rights and remedies under this Security Instrument shall in no way be deemed or construed to make Lender a mortgagee-in-possession.

Section 6.9 **Intentionally Omitted.**

Section 6.10 **Discontinuance of Proceedings.** If Lender (or Trustee) shall have proceeded to enforce any right, power or remedy under this Security Instrument by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all such rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

## **ARTICLE 7**

### **MISCELLANEOUS**

Section 7.1 **Reconveyance.** Upon payment in full of the Loan Obligations, Lender and Trustee shall release the lien of this Security Instrument, and reconvey the Property, or upon the request of Borrower, and at Borrower's expense, assign this Security Instrument without recourse to Borrower's designee, or to the Person or Persons legally entitled thereto, by an instrument duly acknowledged in proper form for recording and reasonably acceptable to Lender.

Section 7.2 **Notices.** All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in Section 12.6 of the Loan Agreement.

Section 7.3 **Amendments; Waivers; Etc.** This Security Instrument cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in proper form for recording, signed by Borrower and Lender.

Section 7.4 **Successors and Assigns.** This Security Instrument applies to, inures to the benefit of and binds Borrower and Lender and their respective successors and assigns, and shall run with the Land.

Section 7.5 **Captions.** The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Security Instrument.

Section 7.6 **Severability.** If any term or provision of this Security Instrument or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Security Instrument shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Loan Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Property, then any payments made in respect of the Loan Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Security Instrument (except to the extent otherwise required by applicable law) be deemed to be made (a) first, in respect of the portion of the Loan Obligations not secured by the lien of this Security Instrument, (b) second, in respect of the portion of the Loan Obligations secured by the lien of this Security Instrument, but which lien is on less than all of the Property, and (c) last, to the portion of the Loan Obligations secured by the lien of this Security Instrument, and which lien is on all of the Property.

Section 7.7 **Applicable Law.** This Security Instrument shall be governed in accordance with the terms and provisions of Section 12.3 of the Loan Agreement.

Section 7.8 **Limitation of Interest.** This Security Instrument is subject to the limitations on the payment of interest set forth in Section 8 of the Note.

Section 7.9 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under all Loan Documents.

Section 7.10 **WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH, AND SUCH CLAIM, COUNTERCLAIM OR ACTION SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.



Section 7.11 **Exhibits**. The information set forth on the cover, heading and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Security Instrument with the same effect as if set forth in the body hereof.

Section 7.12 **Joint and Several**. If more than one Person is now or at any time named as a Borrower hereunder, then each such Person shall have joint and several liability for the obligations and liabilities of Borrower hereunder.

Section 7.13 **Exculpation**. Notwithstanding any other provision in this Security Instrument or any of the other Loan Documents to the contrary, Lender acknowledges and agrees that no Exculpated Party (as hereinafter defined) shall have any liability under this Security Instrument, all such liability, if any, being expressly waived by Lender (except that the foregoing shall not apply with respect to liabilities under written agreements entered into by such Exculpated Party as a party thereto). For purposes hereof, the term “**Exculpated Party**” shall mean collectively, each direct and indirect shareholder, member, officer, director, independent director, agent, manager, independent manager, employee and general or limited partner of Borrower, but the term Exculpated Party shall expressly exclude Borrower and any Guarantor.

## **ARTICLE 8**

### **CROSS-COLLATERALIZATION**

Section 8.1 **Cross-Collateralization**. Borrower acknowledges that the Indebtedness is or may in the future be secured by this Security Instrument together with an additional Security Instrument given by Borrower and/or a certain Affiliate of Borrower to Lender, together with its Assignment of Leases and other Loan Documents securing or evidencing the Debt, and encumbering other property (“**Other Property**”), all as more specifically set forth in the Loan Agreement. Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and such other Security Instrument whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Indebtedness or the portion of the Indebtedness allocated to the Property in the Loan Agreement, and the lien and the security interest created by such other Security Instrument shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Indebtedness then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and such Other Property are located in one or more States and counties, and therefore Lender shall be permitted to enforce payment of the Indebtedness and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or such other Security Instrument and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or such other Security Instrument, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the States or counties in which the Property or such Other Property is located. Neither the acceptance of this Security Instrument, the other Loan Documents or such other Security Instrument nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, this Security Instrument, the other Loan Documents, or such other Security Instrument through one or more

additional proceedings in that State or county or in any other State or county. Any and all sums received by Lender under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Indebtedness in such order and priority as Lender shall determine, in its sole discretion, without regard to any allocated Loan Amount for the Property or such Other Property or the appraised value of the Property or such Other Property.

## ARTICLE 9

### STATE-SPECIFIC PROVISIONS

Section 9.1 **Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 9 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 9 shall control and be binding.

Section 9.2 **Consent to Venue.** Borrower hereby consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the city or county and state where the Property is located with respect to any legal action or proceeding arising with respect to this Security Instrument and waives all objections which it may have to such jurisdiction and venue. Nothing herein shall, however, preclude or prevent Lender from bringing actions against Borrower in any other jurisdiction as may be necessary to enforce or realize upon the security for the Loan provided in any of the other Loan Documents, including without limitation any courts located in the State of New York, or preclude Borrower, with respect to any claim brought by Lender against Borrower, from bringing any defense not otherwise waived by Borrower herein or in any other Loan Document, raising any mandatory counterclaim in such jurisdiction.

Section 9.3 **Actions of Trustee.** The Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign or step taken or omitted, nor for any mistake of law or fact, nor for anything which Trustee may do or refrain from doing in good faith nor generally shall a Trustee have any accountability hereunder except for Trustee's own individual gross negligence or willful default.

Section 9.4 **Trustee as Attorney.** The Trustee may act hereunder and may sell and convey the Property as herein provided although the Trustee has been, may now be or may hereafter be, an attorney or agent of the Lender, in respect of any matter or business whatsoever.

Section 9.5 **Remedies of Lender.** Subject to the provisions of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default under the terms of the Loan Agreement, in addition to any rights and remedies provided for in the Loan Agreement, and to the extent permitted by applicable law, the following provisions apply:

(a) **Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the Property and/or an Individual Property on the date and at the time and place designated in the notice of sale, in such order as

Lender may determine (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Individual 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 or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed 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 forty-five (45) days beyond the date 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 as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Individual Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

*First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed.

*Second:* To payment of the obligations secured by this Deed of Trust.

*Third:* The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Individual Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting to the Obligations of Borrower secured by this Deed of Trust such credit bid amount. Lender, upon so acquiring the Property, an Individual Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all default rate interest and late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's lien upon the Individual Property, and (ii) Lender may add all default rate interest and late charges, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all unpaid late charges in any credit bid Lender may make at a foreclosure sale of the Individual Property pursuant to this Deed of Trust.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Lender, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(b) **Election to Foreclose as a Mortgage.** Upon the occurrence and during the continuance of an Event of Default, Lender 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 Lender shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be fixed by the court. Borrower hereby waives all rights to the marshaling of Borrower's assets encumbered by this Deed of Trust to the fullest extent permitted by law, including each Individual Property, or any portion thereof, and all rights to require an Individual Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising each Individual Property, and attorneys' fees as herein provided, second to pay to Lender the then outstanding amount of the Debt with interest at the applicable rate set forth in the Note, and third to the Person so entitled. Lender may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Lender's bid entered at such sale shall bear interest at the Default Rate.

(c) **Reinstatement.** If Borrower, Borrower's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

Section 9.6 **Substitution of Trustee.** Lender, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Lender and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by *Utah Code Annotated* § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Borrower, Trustee and Lender hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee and all other information required by *Utah Code Annotated* § 57-1-22 or any successor statute. In compliance with *Utah Code Annotated* § 57-1-21.5, the Trustee shall not require the trustor reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

Section 9.7 **Acceptance by Lender.** Lender accepts the trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law.

Section 9.8 **Lender's Fees and Expenses.** In no event shall Borrower be required to pay to Lender any fees or compensation in excess of amounts permitted by *Utah Code Annotated* § 57-1-21.5.

Section 9.9 **Integration.** PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, BORROWER IS NOTIFIED THAT THIS SECURITY INSTRUMENT, THE LOAN AGREEMENT, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

## **ARTICLE 10**

### **DEED OF TRUST PROVISIONS**

Section 10.1 **Concerning the Trustee.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this Section 20.1 for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 10.2 **Trustees Fees.** Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 10.3 **Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error

of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 10.4 **Retention of Money**. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by Applicable Law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 10.5 **Perfection of Appointment**. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 10.6 **Succession Instruments**. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Borrower as of the day and year first above written.

**BORROWER:**

**DAAT REALTY (DESERT PEAK LOGISTICS UT) LP**, a Delaware limited partnership

By: Desert Peak Logistics UT GP LLC,  
a Delaware limited liability company,  
its general partner

By: *Joseph Walker*  
Name: Joseph Walker  
Title: Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
  ) : ss.  
COUNTY OF Dallas )

On December 14, 2022, before me, Mira Lafferton, a Notary Public in and for said County and State, personally appeared Joseph Walker, personally known to me or proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

*Mira Lafferton*  
Notary Public



**Exhibit A**

**DESCRIPTION OF PROPERTY**

PARCEL 1:

All of Lots 1, 2 and 3, WEST JORDAN INDUSTRIAL SUBDIVISION, according to the official plat thereof on file in the office of the Salt Lake County Recorder recorded September 21, 2021 as Entry No. 13778235, Book 2021P at Page 235 of official records.

PARCEL 1A:

A perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress, as established by that Shared Access Easement Agreement, dated July 15, 2021 and recorded July 21, 2021 as Entry No. 13724071 in Book 11210 at Page 2366.

For Reference Purposes Only: Parcel Identification Numbers: 21-19-100-031, 21-19-100-032 and 21-19-100-033