

Parcel/Tax ID #: 22-09-210-095

After Recording Return To:
Indicate Capital REIT LLC
2828 N. Speer Blvd. #210,
Denver, CO 80211

173263-CAP

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Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing

DATA TABLE:

BORROWER INFORMATION:	
Name:	A2Z DEVELOPMENTS LLC, A UTAH LIMITED LIABILITY COMPANY
Address:	1860 E Aspen Leaf Pl, Draper, UT 84020
GUARANTOR INFORMATION:	
Name:	Bryan Anderson
LENDER INFORMATION:	
Name:	Indicate Capital REIT LLC
Address:	2828 N. Speer Blvd. #210, Denver, CO 80211
TRUSTEE INFORMATION:	
Name:	Russel A. Nevers, Esq
Address:	4568 S Highland Drive, Suite 290, Salt Lake City, Utah 84117
LOAN TERMS:	
Principal Debt:	\$209,490.00
Inception Date:	OCTOBER 31, 2023
Regular Interest Rate:	14.00%
Past Due Rate:	24.00%
COLLATERAL INFORMATION:	
Real Property Address(es):	4876 South Highland Circle #5, Holladay, UT 84117
State:	Utah
County:	Salt Lake
Real Property Tax ID(s):	22-09-210-095
Real Property Legal Description(s):	See Exhibit A

This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "**Deed of Trust**") is executed as of the "Inception Date" indicated in the data table above (the "**Data Table**"), by the "**Borrower**" indicated in the Data Table, a grantor for purposes of

indexing, to the “*Trustee*” indicated in the Data Table (the “*Initial Trustee*”), as trustee and a grantee for purposes of indexing, for the benefit of the “*Lender*” indicated in the Data Table, as beneficiary and a grantee for purposes of indexing.

RECITALS:

WHEREAS, simultaneously with the execution of this Deed of Trust, Borrower and Lender have executed a Loan Agreement dated of even date herewith (as amended, modified, supplemented, extended, renewed or replaced from time to time, the “*Loan Agreement*”), pursuant to which Lender has agreed to make a loan to Borrower in the maximum principal amount of the “*Principal Debt*” indicated in the Data Table (as amended, modified, supplemented, extended, renewed or replaced from time to time, the “*Loan*”). All terms used but not otherwise defined herein shall have the meaning provided in the Loan Agreement.

WHEREAS, Borrower is required by the Loan Agreement to execute and deliver this Deed of Trust to, among other things, secure payment of the Indebtedness and performance of the Obligations, which Borrower is willing to do in consideration of the agreement of Lender to make the Loan to Borrower pursuant to the terms of the Loan Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

AGREEMENT:

1. DEFINITIONS.

1.1. *Definitions*. As used herein, the following terms shall have the following meanings:

“*Beneficiary*” means Lender and its successors and assigns.

“*Past Due Rate*” means the Past Due Rate indicated in the Data Table.

“*Federal Bankruptcy Code*” means Title 11 of the United States Code (11 U.S.C. § 101, et seq.), as amended.

“*Indebtedness*” means the sum of all principal (including present and future advances of principal), interest and all other amounts due under or secured by the Loan Documents.

“*Loan Documents*” means, collectively, the Loan Agreement, the Note, this Deed of Trust, the Unconditional Guaranty, all addenda thereto, and agreement executed in connection with any and all other documents which Borrower, Guarantor (as defined in the Loan Agreement) or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure, govern or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“*Note*” means that certain Secured Promissory Note dated of even date with this Deed of Trust executed by Borrower, payable to the order of Lender, in the stated principal amount of the “*Principal Debt*” indicated in the Data Table, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“*Obligations*” means all present and future debts, obligations and liabilities of Borrower to Beneficiary and/or Trustee arising pursuant to, or on account of, the provisions of the Loan Agreement, the Note, this Deed of Trust or any of the other Loan Documents, including, without limitation, the obligation to: (a) pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) pay all expenses, indemnification payments, fees and other amounts due at any time under this Deed of Trust or any of the other Loan Documents, together with interest thereon as provided in this Deed of Trust or such Loan Document; and (c) perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of the Deed of Trust or any of the other Loan Documents.

“*Permitted Encumbrances*” means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Deed of Trust, together with the liens and security interests in favor of Beneficiary and/or Trustee created by the Loan Documents, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Deed of Trust, materially and adversely affect the value of the Property, impair the use or operations of the Property or impair Borrower’s ability to pay its obligations in a timely manner.

“*Property*” means, collectively:

(a) the real property described in Exhibit A;

(b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Property (the “*Improvements*”);

(c) (i) all “goods” and “equipment,” as such terms are defined in Section 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Property or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (the “*Equipment*”). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein; and (ii) All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Property and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other

items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Property, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, Fixtures shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(d) all right, title and interest of Borrower in and to all goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as presently or hereafter defined in the UCC, now owned or hereafter acquired by Borrower and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Property and Improvements or which may be used in or relating to the planning, development, financing or operation of the Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements, rights of Borrower under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, commercial tort claims arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property, all accounts arising from the operation of the Property, and all rights to payment from state or federal programs, boards, bureaus or agencies and rights to payment from patients, private insurers and others arising from the operation of the Property to the extent assignable or that a security interest therein may be granted as a matter of applicable law and under the terms thereof (the "**Personalty**");

(e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Borrower with respect to the Property;

(f) all right, title, and interest of Borrower in all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair, alteration of the Improvements, and all amendments and modifications thereof (the "**Plans**");

(g) all right, title, and interest of Borrower in all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Borrower of any petition of relief under the Federal Bankruptcy Code) and all related security and other deposits (the "**Leases**") and all of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Federal Bankruptcy Code;

(h) all right, title, and interest of Borrower in all of the rents, revenues, liquidated damages payable upon default under the Leases, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Property whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code (the "**Rents**");

(i) all right, title, and interest of Borrower in all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property (the "**Property Agreements**");

(j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Borrower in and to any streets, ways, alleys, strips or gores of land adjoining the Property or any part thereof;

(k) all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Borrower;

(l) all right, title, and interest of Borrower in all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Property;

(m) all right, title, and interest of Borrower in all tradenames, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) all of Borrower's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Property, Improvements, Fixtures or Personality; and

(o) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof.

As used in this Deed of Trust, the term "*Property*" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"*State*" means the State where the Property and Improvements are located.

"*Trustee*" means the Initial Trustee or its successor in trust who may be acting under and pursuant to this Deed of Trust from time to time.

"*UCC*" means the Uniform Commercial Code of the State in effect from time to time or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

1.2. **Other Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

2. **GRANT.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Borrower hereby GRANTS, BARGAINS, SELLS, ALIENS, CONVEYS, CONFIRMS, REMISES AND RELEASES to Trustee in trust, WITH THE POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit of Beneficiary, the Property, subject, however, to the Permitted Encumbrances; TO HAVE AND TO HOLD the Property to Trustee in trust for the benefit of Beneficiary, and Borrower does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee in trust for the benefit of Beneficiary and its successors, substitutes and assigns; provided, however, that notwithstanding the foregoing, at the Beneficiary's option, the Beneficiary shall be entitled to exercise all rights and remedies of a secured party under the UCC with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements as set forth in Section 6 below.

3. **WARRANTIES, REPRESENTATIONS AND COVENANTS.** Borrower warrants, represents and covenants to Beneficiary as follows:

3.1. **Title to Property and Lien of this Instrument.** Borrower owns the Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Deed of Trust creates valid, enforceable first priority liens and security interests against the Property. Borrower warrants and represents that Borrower has good, marketable and insurable title to the Property; has the full power, authority and right to execute, deliver and perform its obligations under this Deed of Trust; that the execution and delivery of this Deed of Trust and the Loan Documents has been authorized by Borrower; and that there is no provision in any document relating to Borrower that evidences or establishes the existence of Borrower requiring further consent for such action by any other entity or person.

3.2. **First Lien Status.** Borrower shall preserve, protect, warrant and defend, at Borrower's sole cost and expense, the first lien and security interest status of this Deed of Trust and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Property, Borrower shall promptly, and at its expense, (a) give Beneficiary a detailed

written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or, in Beneficiary's discretion, provide a bond or other security satisfactory to Beneficiary for the payment of such claim.

3.3. Payment and Performance. Subject to all applicable notice and/or cure periods, Borrower shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

3.4. Replacement of Fixtures and Personalty. Borrower shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Property or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Borrower subject to the liens and security interests of this Deed of Trust and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Beneficiary.

3.5. Maintenance of Rights of Way, Easements and Licenses. Borrower shall maintain (or cause the third-party responsible for such maintenance to maintain) all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Property and will not, without the prior consent of Beneficiary, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Property. Borrower shall comply with (or cause compliance of) all restrictive covenants affecting the Property, and all zoning ordinances and other public or private restrictions as to the use of the Property.

3.6. Inspection. Borrower shall permit Beneficiary and its agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Property and conduct such environmental and engineering studies as Beneficiary may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Property.

3.7. Other Covenants, Representations and Warranties. All of the covenants, including, but not limited to affirmative covenants, negative covenants and single purpose covenants, in (a) the Loan Agreement, (b) the Note and (c) any of the other Loan Documents (subject to all provisos and limitations in the Loan Documents) are incorporated herein by reference and are made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein and, together with covenants in this Section 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (v) the obligation to pay when due (or cause the payment of) all taxes on the Property or assessed against Beneficiary and/or Trustee with respect to the Loan, (w) the right of Beneficiary to inspect the Property, (x) the obligation to keep (or cause to be kept) the Property insured as Beneficiary may require, (y) the obligation to comply (or cause the compliance) with all legal requirements (including environmental laws), maintain (or cause to be maintained) the Property in good condition, and promptly repair (or cause to be promptly repaired) any damage or casualty, and (z) except as otherwise permitted under the Loan Agreement, the obligation of Borrower to obtain Beneficiary's consent prior to entering into, modifying or taking other actions with respect to Leases.

3.8. Condemnation Awards and Insurance Proceeds.

(a) *Condemnation Awards.* Subject to the terms of the Loan Agreement, Borrower assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor.

(b) *Insurance Proceeds.* Subject to the terms of the Loan Agreement, Borrower assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Property. Borrower authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Borrower and Beneficiary jointly.

3.9. Transfer or Encumbrance of Property.

(a) Borrower shall not, without the prior written consent of Beneficiary, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or permit the Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred. A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 3.9.(a) shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if Borrower, any guarantor, or any general partner of Borrower or a guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Borrower, any guarantor or any general partner of Borrower or any guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member, or the sale, conveyance, transfer or other disposition of any direct or indirect beneficial interests in such entity; and (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Borrower.

(b) Neither Beneficiary nor Trustee shall be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property or any portion thereof without Beneficiary's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property.

(c) Beneficiary's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property or any portion thereof shall not be deemed to be a waiver of Beneficiary's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property or any portion thereof made in contravention of this paragraph shall be null and void and of no force and effect.

(d) Borrower agrees to bear and shall pay or reimburse Beneficiary and/or Trustee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary and/or Trustee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(e) any breach of this Section 3.9. shall constitute an Event of Default.

3.10. **Leases.** Borrower shall not enter into any Leases, or any amendments, modifications or revisions thereto, without the prior written consent of Beneficiary, which consent shall be given or withheld in its sole and absolute discretion. Any Leases entered into shall be automatically subordinate to this Deed of Trust and provide that the lessee thereunder attorn in writing to Beneficiary at Beneficiary's request.

4. DEFAULT & FORECLOSURE.

4.1. **Remedies.** If an Event of Default exists, Beneficiary, or Trustee at the direction of Beneficiary, at Beneficiary's election, may exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness then outstanding to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower and Guarantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Property.** Enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Borrower remains in possession of the Property after an Event of Default and without Beneficiary's prior written consent, upon prior written notice, Beneficiary, or Trustee at the direction of Beneficiary, may invoke any legal remedies to dispossess Borrower.

(c) **Foreclosure and Sale.** Institute proceedings, judicial or otherwise, for the complete foreclosure of this Deed of Trust, in which case the Property may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Borrower, and against all other persons claiming or to claim the property sold or

any part thereof, by, through or under Borrower. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Indebtedness in lieu of paying cash.

(d) *Receiver*. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Borrower or regard to the adequacy of the Property for the repayment of the Indebtedness, the appointment of a receiver of the Property, and Borrower irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(e) *UCC*. Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the personal property, and (ii) request Borrower at its expense to assemble the personal property and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary with respect to the personal property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower.

(f) *Other*. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Deed of Trust).

4.2. *Separate Sales*. The Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion, may elect and/or direct Trustee; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

4.3. *Remedies Cumulative, Concurrent and Nonexclusive*. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note and the other Loan Documents, or against the Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary and/or Trustee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

4.4. *Release of and Resort to Collateral*. Beneficiary (and/or Trustee on behalf of Beneficiary) may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests

created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Beneficiary (and/or Trustee on behalf of Beneficiary) may resort to any other security in such order and manner as Beneficiary may elect.

4.5. Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, and (b) any right to a marshalling of assets or a sale in inverse order of alienation.

4.6. Discontinuance of Proceedings. If Beneficiary (and/or Trustee on behalf of Beneficiary) shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Borrower and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise (except as may be provided in any written agreement between Borrower and Beneficiary providing for the discontinuance or abandonment of such proceedings), and the rights, remedies, recourses and powers of Beneficiary (and/or Trustee) shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary (and/or Trustee) thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

4.7. Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (i) Trustee's and receiver's fees and expenses, (ii) court costs, (iii) attorneys' and accountants' fees and expenses, (iv) costs of advertisement, (v) insurance premiums and (vi) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Property shall have been sold;

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Beneficiary under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

4.8. *Occupancy After Foreclosure.* The purchaser at any foreclosure sale pursuant to Section 4.1. shall become the legal owner of the Property. Subject to any non-disturbance agreements, or subordination, non-disturbance and attornment agreements, then in effect, all occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Property.

4.9. *Additional Advances and Disbursements; Costs of Enforcement.*

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Borrower. All sums advanced and expenses incurred at any time by Beneficiary under this Section 4.9., or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Past Due Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Borrower shall pay all expenses (including attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

(c) Grantor and Beneficiary agree that in the event Grantor defaults on any of its obligations under any of the Loan Documents resulting in Beneficiary commencing a foreclosure action to enforce the remedies granted herein, Beneficiary will incur additional overhead administrative and lost opportunity costs in pursuing the foreclosure remedy for which it is not adequately compensated for pursuant to the terms of the Note and other Loan Documents. These damages are impracticable and extremely difficult to ascertain. In that regard, in the event of a foreclosure, Grantor agrees to pay Beneficiary as liquidated damages and not as a penalty an amount equivalent to one percent (1%) of the outstanding Indebtedness at the time of the commencement of foreclosure proceedings in addition to all other sums due and payable.

4.10. *No Mortgagee in Possession.* Neither the enforcement of any of the remedies under this Section 4, the assignment of the Rents and Leases under Section 5, the security interests under Section 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

4.11. **Actions and Proceedings.** Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Beneficiary, in its reasonable discretion, decides is necessary to protect its interest in the Property.

4.12. **Use and Occupancy During Continuing Event of Default.** During the continuance of any Event of Default, and pending the exercise by Beneficiary of its right to exclude Borrower from all or any part of the Property, Borrower agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any part thereof that is in possession for such period, and upon default of any such payment, will vacate and surrender possession of the Property, or any part thereof, to Beneficiary, Trustee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of the Property for non-payment of rent, however designated.

5. ASSIGNMENT OF RENTS & LEASES.

5.1. **Assignment.** Borrower acknowledges and confirms that it has executed and delivered to Beneficiary an Assignment of Leases and Rents of even date herewith (the "**Assignment of Leases and Rents**"), intending that such instrument create a present, absolute assignment to Beneficiary of the Leases and Rents (subject to a license contained therein granting Borrower the right to collect, receive, use and enjoy such rents prior to an Event of Default). Without limiting the intended benefits or the remedies provided under the Assignment of Leases and Rents, Borrower hereby assigns to Beneficiary, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Beneficiary shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in Section 4 hereof, including, without limitation, the right to have a receiver appointed. If any conflict or inconsistency exists between the assignment of the Rents and the Leases in this Deed of Trust and the absolute assignment of the Rents and the Leases in the Assignment of Leases and Rents, the terms of the Assignment of Leases and Rents shall control.

5.2. **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Beneficiary, any lessee or any third party by purchase or otherwise.

6. SECURITY AGREEMENT.

6.1. **Security Interest.** This Deed of Trust constitutes a "**Security Agreement**" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, and subject to the Permitted Exceptions, Borrower grants to Beneficiary and Trustee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements

sent to Borrower at least ten (10) days prior to any action under the UCC shall constitute commercially reasonable notice to Borrower.

6.2. Further Assurances. Borrower shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Borrower hereby irrevocably authorizes Beneficiary at any time and from time to time to file, without the signature of Borrower, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Property (i) as "*all assets of Borrower and all proceeds thereof, and all rights and privileges with respect thereto*" or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Beneficiary in its reasonable discretion. Borrower agrees to furnish any such information to Beneficiary promptly upon request.

6.3. No Obligation of Beneficiary or Trustee. The security interest herein granted shall in no event cause Beneficiary or Trustee to be deemed or construed as a mortgagee in possession of the Property, to obligate Beneficiary or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

6.4. Fixture Filing. This Deed of Trust shall also constitute a "*fixture filing*" for the purposes of the UCC against all of the Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Borrower) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

6.5. Continuing Effect Notwithstanding Termination of Deed of Trust. It is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Beneficiary (or Trustee on behalf of Beneficiary), this Deed of Trust shall remain fully effective as a security agreement and fixture filing, notwithstanding that the lien on real property that is created by this Deed of Trust may be extinguished or released, by foreclosure of this Deed of Trust or otherwise.

7. MISCELLANEOUS.

7.1. Limitation on Interest. The provisions of Section 15 of the Note are incorporated herein by references as though fully set forth herein.

7.2. Notices. Any notice required or permitted to be given under this Deed of Trust shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

7.3. Covenants Running with the Property. All Obligations contained in this Deed of Trust are intended by Borrower, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Property. As used herein, the term "*Borrower*" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Property). All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

7.4. Attorney-in-Fact. Borrower hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems reasonably necessary to protect Beneficiary's interest, if Borrower shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust by means of power of sale or otherwise, or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be reasonably necessary for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Borrower hereunder; however: (i) neither Beneficiary nor Trustee shall under any circumstances be obligated to perform any obligation of Borrower; (ii) any reasonable sums advanced by Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the Past Due Rate; (iii) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (iv) neither Beneficiary nor Trustee shall be liable to Borrower or any other person or entity for any failure to take any action which Beneficiary is empowered to take under this Section 7.4.

7.5. Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Borrower and their respective successors and assigns. Borrower shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

7.6. No Waiver. Any failure by Beneficiary and/or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary and/or Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

7.7. Subrogation. To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Property, then Beneficiary shall be subrogated to all of the rights, liens and interests existing against the Property and held by the holder of such indebtedness

and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

7.8. Loan Agreement. If any conflict or inconsistency exists between this Deed of Trust and the Loan Agreement, the Loan Agreement shall govern.

7.9. Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, Beneficiary (or Trustee on behalf of Beneficiary), at Borrower's reasonable expense, shall fully release the liens and security interests created by this Deed of Trust and provide termination statements for filed financing statements, if any, to Borrower.

7.10. Waiver of Stay, Moratorium and Similar Rights. Borrower agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Indebtedness, or any agreement between Borrower and Beneficiary or any rights or remedies of Beneficiary.

7.11. Limitation of Liability. Borrower's liability hereunder is subject to the limitation on liability provisions of the Loan Documents.

7.12. Obligations of Borrower, Joint and Several. If more than one person or entity has executed this Deed of Trust as "Borrower," the obligations of all such persons or entities hereunder shall be joint and several.

7.13. Governing Law. This Deed of Trust shall be governed by and construed, interpreted and enforced in accordance with the laws of the State.

7.14. Venue. Borrower hereby consents to the jurisdiction of any state or federal court located within the County and State and irrevocably agrees that, subject to Beneficiary's election, all actions or proceedings arising out of or relating to this Deed of Trust shall be litigated in such courts (venue for the other Loan Documents shall be Denver, Colorado). Borrower expressly submits and consents to the jurisdiction of the aforesaid courts and waives any defense of forum non conveniens. Borrower hereby waives personal service of any and all process and agrees that all such service of process may be made upon Borrower by certified or registered mail, return receipt requested, addressed to Borrower, at the address set forth in this Deed of Trust and service so made shall be deemed complete ten (10) days after the same has been posted.

7.15. Headings. The Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Sections or Subsections.

7.16. Entire Agreement. This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior,

contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

7.17. **Counterparts.** This Deed of Trust may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

7.18. **No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

7.19. **Inapplicable Provisions.** If any term, covenant or condition of this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

7.20. **Waiver of Trial by Jury.** BORROWER AND BENEFICIARY (BY LENDER'S ACCEPTANCE OF THIS DEED OF TRUST) EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, COUNTERCLAIM, CROSSCLAIM OR OTHERWISE, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS DEED OF TRUST OR THE LOAN DOCUMENTS, THE PROPERTY OR ANY ACTS OR OMISSIONS OF BORROWER OR BENEFICIARY, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO A TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND BENEFICIARY (BY LENDER'S ACCEPTANCE OF THIS DEED OF TRUST), 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 BENEFICIARY ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

7.21. **Borrower Waiver.** BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER WITH RESPECT TO THIS DEED OF TRUST, THE NOTE OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (A) INJUNCTIVE RELIEF, (B) INTERPOSE ANY COUNTERCLAIM (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (C) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING (EXCEPT TO THE EXTENT COMPULSORY). NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

7.22. **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Beneficiary intend that the relationships created by this Deed of Trust and the Loan Documents are solely that of lender and borrower. Nothing in this Deed of Trust or the Loan Documents is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Beneficiary (or Trustee) nor grant to Beneficiary any interest in the Property other than that of mortgagee, assignee, secured party, beneficiary or lender.

(b) This Deed of Trust and the Loan Documents are solely for the benefit of the Beneficiary and/or Trustee and nothing contained in this Deed of Trust or the Loan Documents shall be deemed to confer upon anyone other than Beneficiary and/or Trustee any right to insist upon or to enforce the performance or observance of any of the obligations contained in this Deed of Trust or the Loan Documents.

7.23. Time is of the essence with respect to the performance by Borrower of its obligations pursuant to this Deed of Trust.

7.24. Borrower acknowledges that it has received a true copy of this Deed of Trust.

8. TRUSTEE.

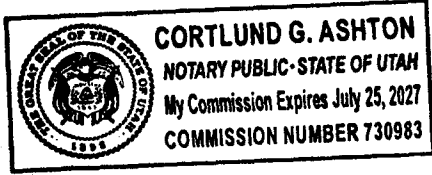
8.1. **Liability of Trustee.** Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Loan Documents or the description, value or status of title to the Property. Trustee shall be protected in acting upon any notice, 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 the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful conduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Beneficiary, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Property following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Beneficiary.

8.2. **Indemnification of Trustee.** Borrower agrees to indemnify Trustee and to hold Trustee harmless from and against any and all claims and expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including but not limited to any claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Borrower or any other person in connection with the ownership, development, financing, operation or sale of the

My commission expires: 7/25/23



Notary Public



Optional Addenda (check all that apply):

- Addendum SP (State Specific Provisions)

EXHIBIT A TO DEED OF TRUST: LEGAL/REAL PROPERTY DESCRIPTION

Unit 5, in Building 4876, contained within CHATEAU FORET CONDOMINIUM DEVELOPMENT, as the same is identified in the Plat filed in the office of the Salt Lake County Recorder, Utah, on September 29, 1995 as Entry No. 6179878 in Book 95-9P of Plats at Page 248 and in the declaration recorded October 2, 1995 as Entry No. 6180205 in Book 7240 at Page 795 (as said declaration may have been subsequently restated, amended and/or supplemented).

TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities defined under said declaration.

4876 South Highland Circle #5, Holladay, UT 84117

22-09-210-095