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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
02/20/2013 10:26 AM
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WHEN RECORDED, RETURN TO:

Bullock Law Firm
353 East 300 South
Salt Lake City, Utah 84111

10-065-0036 **TRUST DEED
WITH ASSIGNMENT OF RENTS**

THIS TRUST DEED WITH ASSIGNMENT OF RENTS is made and entered into
among:

TERRY N. HINES
1140 W. Gentile Street
Layton, Utah 84041 ("Beneficiary")

AND

CLINTON J. BULLOCK, ESQ.
c/o Bullock Law Firm
353 East 300 South
Salt Lake City, Utah 84111 ("Trustee")

AND

HINES & COMPANY, INC.,
a Utah corporation
1140 W. Gentile Street
Layton, Utah 84041 ("Trustor")

The Effective Date of this Instrument is December 31, 2012.

All of the Terms and Definitions contained in this Instrument will be applicable to the provisions of this Trust Deed with Assignment of Rents.

1. **TERMS.**

1.1 **"Real Property"** means real property known as Serial Number 100650036 located at 1140 W. Gentile Street, Layton, Davis County, State of Utah, and further described as follows:

Beginning at a point on the easterly right-of-way line of the D.&R.G.W. Railroad which is S 0°11'20" W 697.54 feet along the section line and West 900.44 feet, and S 34°43'40" E 796.35 feet from the East Quarter corner of section 19, Township 4 North, Range 1 West, Salt Lake Base and Meridian; running thence S 34°40'40" E 1401.88' feet along the easterly right of way line, of said railroad, thence N 0°13'10" E 1152.17 feet along the westerly line of a 66.00 foot wide street, thence West 803.02 feet to the point of beginning.

1.2 **"Improvements"** means any improvements located upon the Real Property.

1.3 **"Promissory Note"** means a secured promissory note as follows:

Date:	<u>December 31, 2012</u>
Borrower:	Alexander J. Hines
Lender:	Terry N. Hines
Principal Amount:	\$ 700,000,.00

2. **DEFINITIONS.**

2.1 **"Assign," "Assigned" or "Assignment,"** as the tense or context may require, means convey, transfer, grant, pledge, bargain, mortgage, sell, exchange and/or deliver, by deed or otherwise.

2.2 **"Day"** means a calendar day, except that if a day shall be, or any period specified in this Instrument shall end, on a Saturday, Sunday or a legal holiday within the State of Utah (as defined in § 63-13-2, Utah Code Annotated), the day shall be, or the period shall be deemed to end, on the next calendar day which is not a Saturday, Sunday or legal holiday within the State of Utah.

2.3 **"Instrument" or "Trust Deed"** means this Trust Deed with Assignment of Rents.

2.4 **"Party"** means Beneficiary, Trustee or Trustor, as the context dictates.

2.5 **"Parties"** means Beneficiary, Trustee and Trustor.

3. **UNDERSTANDINGS.**

3.1 **TRUSTOR** irrevocably Assigns to Trustee, in Trust, with power of sale, the Real Property described above;

3.2 **TOGETHER WITH** all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Real Property, or any part thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits;

3.3 **FOR THE PURPOSE OF SECURING** (1) payment of the indebtedness evidenced by the Promissory Note in the manner and with interest as set forth in the Promissory Note, and any extensions and/or renewals or modifications of the Promissory Note; (2) the performance of each agreement of Trustor contained in this Instrument; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Instrument; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms of this Instrument, together with interest thereon as provided in this Instrument.

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

4.1 TO KEEP THE REAL PROPERTY in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Real Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Real Property in violation of law; to do all other acts which from the character or use of the Real Property may be reasonably necessary, the specific enumerations in this Instrument not excluding the general; and, if the loan secured by this Instrument or any part thereof is being obtained for the purpose of financing construction of improvements on the Real Property, Trustor further agrees;

(a) **TO COMMENCE CONSTRUCTION** promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary; and

(b) **TO ALLOW BENEFICIARY** to inspect the Real Property at all times during construction.

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

4.3 TO PROVIDE AND MAINTAIN INSURANCE, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on the Real Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

4.4 TO DELIVER TO, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and extensions or renewals thereof or supplements thereto.

4.5 TO APPEAR IN and defend any action or proceeding purporting to affect the security hereof, the title to the Real Property, or the rights or powers of Beneficiary or Trustee, and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

4.6 TO PAY AT LEAST TEN (10) Days before delinquency all taxes and assessments affecting the Real Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in

connection with the Real Property; to pay, when due, all encumbrances, charges, and liens with interest on the Real Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees and expenses of this Trust.

4.7 **SHOULD TRUSTOR** fail to make any payment due under the Promissory Note or to do any act as provided in this Instrument, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Real Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel and pay his reasonable fees.

4.8 **TO PAY IMMEDIATELY** and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of Ten Percent (10.0%) per annum until paid, and the repayment thereof shall be secured hereby.

5. **IT IS MUTUALLY AGREED THAT:**

5.1 **BENEFICIARY MAY** at Beneficiary's option, declare immediately due and payable all sums secured by this Trust Deed upon the sale or transfer, without Beneficiary's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable, whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years; lease-option contract, or by sale, assignment, or transfer of any beneficiary interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five (25%) percent of the voting stock, partnership interest or limited liability company interest, as the case may be, of such Trustor.

5.2 **SHOULD THE REAL PROPERTY** or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake or in any other manner, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Real Property, are hereby Assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages and rights of action and proceeds as Beneficiary or Trustee may require.

5.3 **AT ANY TIME** and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for

endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Real Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Real Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

5.4 AS ADDITIONAL SECURITY, Trustor hereby Assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties and profits of the Real Property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power and authority to collect the same. Nothing contained in this Instrument, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

5.5 UPON ANY DEFAULT by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Real Property or any part thereof, in its own name sue for or otherwise collect said rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

5.6 THE ENTERING UPON and taking possession of the Real Property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Real Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5.7 THE FAILURE on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

5.8 TIME IS OF THE ESSENCE HEREOF. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Real Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for

record in each county wherein the Real Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

5.9 **AFTER THE LAPSE** of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Real Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which the Real Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed Assigning the Real Property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at Ten Percent (10.0%) per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

5.10 **UPON THE OCCURRENCE** of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

5.11 **BENEFICIARY MAY APPOINT A SUCCESSOR TRUSTEE** at any time by filing for record in the office of the County Recorder of each county in which the Real Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named in this Instrument or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

5.12 **THIS TRUST DEED** shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

5.13 **TRUSTEE ACCEPTS** this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

5.14 **THIS TRUST DEED** shall be construed according to the laws of the State of Utah.

5.15 **THE UNDERSIGNED TRUSTOR** requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

[CONTINUED ON NEXT PAGE]

**THIS SIGNATURE AND NOTARY PAGE IS PART OF A DOCUMENT ENTITLED
"TRUST DEED WITH ASSIGNMENT OF RENTS" AND HAS NOT BEEN SIGNED BY
THE FOLLOWING PERSON(S) FOR ANY OTHER PURPOSE.**

DATED as of the Effective Date first above written.

SIGNATURE OF TRUSTOR:

HINES & COMPANY, INC.;
A UTAH CORPORATION:

By *Terry N. Hines*
Terry N. Hines, President

By *Alexander J. Hines*
Alexander J. Hines, Secretary

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 31st day of December, 2012, personally appeared before me, TERRY N. HINES, who is personally known to me or who proved to me his identity through documentary evidence to be the signer of the foregoing instrument as President of *Hines & Company, Inc.*, a Utah corporation ("TRUSTOR"), and who acknowledged to me that he signed it on behalf of said corporation, by authority of a resolution of the shareholders and directors, voluntarily for its stated purpose.



[NOTARY SEAL]

Julie F. Ord
NOTARY PUBLIC

THIS NOTARY PAGE IS PART OF A DOCUMENT ENTITLED "TRUST DEED WITH ASSIGNMENT OF RENTS" AND HAS NOT BEEN SIGNED BY THE FOLLOWING PERSON(S) FOR ANY OTHER PURPOSE.

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 31st day of December, 2012, personally appeared before me, ALEXANDER J. HINES, who is personally known to me or who proved to me his identity through documentary evidence to be the signer of the foregoing instrument as Secretary of *Hines & Company, Inc.*, a Utah corporation ("TRUSTOR"), and who acknowledged to me that he signed it on behalf of said corporation, by authority of a resolution of the shareholders and directors, voluntarily for its stated purpose.



[NOTARY SEAL]



NOTARY PUBLIC