

UPON RECORDING THIS INSTRUMENT  
SHOULD BE RETURNED TO:

McNelson, LLC  
2062 W Bamberger Dr  
Riverton, UT 84065

ENT 291:2025 PG 1 of 25  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2025 Jan 02 03:18 PM FEE 40.00 BY CS  
RECORDED FOR National Title Agency of Ut  
ELECTRONICALLY RECORDED

Tax # 22-015-0060

File # 24-5633 BR

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Security Instrument") is made as of this 30<sup>th</sup> day of December, 2024, by KYLE JESSEE AND SPENCER CROCKER (the "Borrower"), whose address is 4656 S Sycamore Dr, Hollday, UT 84117, as trustor, to National Title Agency of Utah, Inc., as trustee ("Trustee"), whose address is 6770 S 900 E #101, Midvale, UT 84047, for the benefit of MCNELSON, LLC, a Utah limited liability company ("Lender"), whose address is 2062 W Bamberger Dr, Riverton UT 84065, as beneficiary.

**BACKGROUND**

Borrower and Lender entered into that certain Secured Promissory Note of even date herewith (the "Note"), pursuant to which Lender agreed to loan the original principal amount of \$2,500,000.00 to Borrower (the "Loan"). Borrower desires to secure payment and performance of Borrower's obligations in respect of the Loan and other Obligations (as defined herein) by granting to Lender the security described in this Security Instrument.

NOW, THEREFORE, to induce Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees as follows:

**ARTICLE 1  
DEFINED TERMS**

1.01 Defined Terms. Capitalized terms used in this Security Instrument and not specifically defined in this Security Instrument have the meaning provided in the Note.

## ARTICLE 2 GRANT OF SECURITY

2.01 Property Mortgaged. Borrower does hereby irrevocably deed, mortgage, grant, bargain, sell, assign, pledge, warrant, transfer and convey to Trustee, and to its successors and assigns as trustee, in trust for the benefit of Lender, as security for the Obligations, with power of sale, the following property, rights, interests and estates, now owned or hereafter acquired by Borrower (collectively, **"Property"**):

(a) Land. The land described in Exhibit A attached hereto and made a part hereof, together with all estates and development rights now existing or hereafter acquired for use in connection therewith (**"Land"**):

(b) Additional Land. All land that, from time to time, by supplemental deed or otherwise, may be expressly made subject to this Security Instrument, and all estates and development rights hereafter acquired by Borrower for use in connection with such land (also, the (**"Land"**):

(c) Improvements. All buildings, structures, improvements and fixtures now or hereafter erected or located on the Land (**"Improvements"**):

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Property and the reversion and reversions, remainder and remainders, 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, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Property and every part and parcel thereof, with all appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furnishing, building supplies and materials, and all other personal property of every kind and nature whatsoever owned by Borrower (or in which Borrower has or hereafter acquires an interest) and now or hereafter located upon, or appurtenant to, the Property or used or useable in the present or future operation and occupancy of the Property, along with all accessions, replacements, betterments, or substitutions of all or any portion thereof (collectively, **"Personal Property"**):

(f) Leases and Rents. All leases, subleases, licenses and other agreements granting others the right to use or occupy all or any part of the Property together with all restatements, renewals, extensions, amendments and supplements thereto (**"Leases"**), now existing or hereafter entered into, and whether entered before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Reform Act of 1978 codified as 11

U.S.C. §101 et. seq., and the regulations issued thereunder, both as hereafter modified from time to time (the "**Bankruptcy Code**"), and all of Borrower's right, title and interest in the Leases, including, without limitation (i) all guarantees, letters of credit and any other credit support given by any tenant or guarantor in connection therewith ("**Lease Guaranties**"), (ii) all cash, notes, or security deposited thereunder to secure the performance by the tenants of their obligations thereunder ("**Tenant Security Deposits**"), (iii) all claims and rights to the payment of damages and other claims arising from any rejection by a tenant of its Lease under the Bankruptcy Code, ("**Bankruptcy Claims**"), (iv) all of the landlord's rights in casualty or condemnation proceeds of a tenant in respect of the leased premises ("**Tenant Claims**"), (v) all rents, ground rents, additional rents, revenues, termination and similar payments, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property (collectively with the Lease Guaranties, Tenant Security Deposits, Bankruptcy Claims and Tenant Claims, "**Rents**"), whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, (vi) all proceeds or streams of payment from the sale or other disposition of the Leases or disposition of any Rents, and (vii) the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents;

(g) **Condemnation Awards.** 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, without limitation, 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;

(h) **Insurance Proceeds.** All proceeds of, and any unearned premiums on, any insurance policies covering the Property, including, without limitation, the exclusive right to receive and apply the proceeds of any claim awards, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) **Tax Certiorari.** All refunds, rebates or credits in connection with a reduction in Taxes, including, without limitation, rebates as a result of tax certiorari or any other applications or proceedings for reduction;

(j) **Operating Agreements.** All contracts (including, without limitation, service, supply, maintenance and construction contracts), registrations, franchise agreements, permits, licenses (including, without limitation, liquor licenses, if any, to the fullest extent assignable by Borrower), plans and specifications, and oilier agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property, or respecting any business or activity conducted by Borrower from the Property, and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Borrower thereunder (collectively, "**Operating Agreements**");

(k) **Intangibles.** All accounts, escrows, chattel paper, claims, deposits, trade names, trademarks, service marks, logos, copyrights, books and records, goodwill, and all oilier general intangibles relating to or used in connection with the operation of the Property;

(l) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, together with all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property from time to time held therein, and all proceeds, products, distributions, dividends or substitutions thereon or thereof;

(m) Rights to Conduct Legal Actions. The right, in the name and on behalf of Borrower, to commence any action or proceeding to protect the interest of Lender in the Property and to appear in and defend any action or proceeding brought with respect to the Property;

(n) Proceeds. All proceeds and profits arising from the conversion, voluntary or involuntary, of any of the foregoing into cash (whether made in one payment or a stream of payments) and any liquidation claims applicable thereto; and

(o) Rights. Any and all other rights of Borrower in and to the items set forth in the foregoing subsections (a) through (n), inclusive, and in and to the Property.

TO HAVE AND TO HOLD the above granted and described Property unto Trustee, and its successors and assigns, in trust, with power of sale in accordance with the terms and conditions hereof, for the use and benefit of Lender, and the successors and assigns of Lender, forever; subject, however, to Section 2.05 below.

2.02 Grant of Security Interest: Security Agreement. Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the fullest extent that the Property now or hereafter may be subject to a security interest under the Uniform Commercial Code as in effect from time to time in the state of Utah (the "UCC"). Borrower intends for this Security Instrument to be a "security agreement" within the meaning of the UCC. Borrower hereby irrevocably authorizes Lender to prepare, execute and file all initial financing statements, and any restatements, extensions, continuations, renewals or amendments thereof, in such form as Lender may require to perfect or continue the perfection of this security interest or other statutory liens held by Lender. Unless prohibited by applicable law, Borrower agrees to pay all reasonable expenses incident to the preparation, execution, filing and/or recording of any of the foregoing. With respect to any of the Property in which a security interest is not perfected by the filing of a financing statement, Borrower consents and agrees to undertake, and to cooperate fully with Lender, to perfect the security interest hereby granted to Lender in the Property. Without limiting the foregoing, if and to the extent any of the Property is held by a bailee for the benefit of Borrower, Borrower shall promptly notify Lender thereof and, if required by Lender, promptly obtain an acknowledgment from such bailee that is satisfactory to Lender and confirms that such bailee holds the Property for the benefit of Lender as secured party and shall only act upon instructions from Lender with respect to the Property.

### 2.03 Assignment of Leases and Rents.

(a) Rights Granted to Lender. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents. Borrower hereby declares its intention to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and Leases and to authorize and empower Lender to collect and receive all Rents and exercise all of Borrower's rights under the Leases (including, without limitation, the right to modify, extend or terminate

any Lease) without any further action by Borrower; it being intended that this assignment is effective immediately and not an assignment made for security only, notwithstanding any provision hereof to the contrary. For purposes of giving effect to this assignment of Rents and Leases and for no other purpose, Rents and Leases shall not be deemed to be part of the "Property" as that term is defined in Section 2.01 of this Security Instrument. If, however, this assignment of Rents and Leases is not enforceable by its terms under the laws of the State where the Property is located, then Rents and Leases shall be included as part of the Property and it is Borrower's intention that, in this circumstance, this Security Instrument creates and perfects a lien of the Rents and Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) License to Borrower: Revocation. Nevertheless, subject to the terms of this Security Instrument, Lender grants to Borrower a revocable license (i) to manage the leasing activities of the Property (ii) to exercise all of Borrower's rights under the Leases and (iii) to collect and receive the Rents in trust for Lender and to apply the Rents to discharge all current amounts due on the Debt and to pay the current costs of managing, operating and maintaining the Property. So long as no Event of Default exists, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument. From and after the occurrence of an Event of Default, and without the necessity of notice or prior demand or Lender's entering upon and taking and maintaining control of the Property (whether directly or through a receiver), the license granted to Borrower by this Section shall terminate automatically, and Lender shall be entitled to receive and collect the Rents as they become due and payable and exercise all of Borrower's rights or the rights of lessor under the Leases and with respect to the Rent. Lender's right to revoke the license granted to Borrower is in addition to all other rights and remedies available to Lender following an Event of Default.

(c) No Obligations Assumed by Lender. Neither the granting of this assignment to Lender, nor Lender's exercise of any rights or remedies with respect to this assignment, shall be construed (i) to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property or (ii) to obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this assignment shall not operate to place on Lender any obligation or liability for: (i) the control, care, management or repair of the Property; (ii) for carrying out any of the terms and conditions of the Leases; (iii) any waste committed on the Property by tenants or any other parties; (iv) any dangerous or defective condition of the Property (including, without limitation, the presence of any hazardous materials); or (v) any negligence in the management, upkeep, repair or control of the Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Property after an Event of Default.

2.04 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the UCC) on the Land, and this Security Instrument upon being filed for record in the

real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC upon such of the Property that is or will become fixtures.

2.05 Release of Security. The grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers by this Security Instrument are subject to the express condition that, if Borrower pays to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument and performs all Obligations when and as required by the Note and this Security Instrument, Lender shall release the Property from the grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers created by this Security Instrument and reconvey the Property to Borrower. Lender shall prepare (at Borrower's expense) and deliver to Borrower such documents as are necessary to effect such release and reconveyance.

### ARTICLE 3 DEBT AND OBLIGATIONS SECURED

3.01 Debt. This Security Instrument and the interests created in favor of Lender hereunder are given for the purpose of securing (a) payment of principal, interest and all other amounts due at any time under the Note and all agreements entered into in connection with the Note (collectively, the "Loan Documents"), including, without limitation, interest at the default rate as set forth in the Note, any late fee for delinquent payments, and amounts advanced by Lender to protect and preserve the Property and the liens hereby created for the benefit of Lender (collectively, "Debt"), and (b) performance of all obligations of Borrower contained in the Loan Documents (collectively with the Debt, "Obligations").

### ARTICLE 4 BORROWER COVENANTS

4.01 Payment of Debt and Performance of Obligations. Borrower will pay the Debt at the time and in the manner provided in the Loan Documents and fully and punctually perform the Obligations when and as required by the Loan Documents.

4.02 Compliance with Loan Documents. Borrower shall comply with all covenants and agreements in the Loan Documents, including, without limitation, all obligations regarding the ownership, operation, management and condition of the Property and the protection and perfection of the liens hereby created in favor of Lender. Without limiting the foregoing, Borrower agrees:

(a) No Transfers of the Property or Interests in Borrower. Borrower shall not cause or permit any Transfer of the legal or beneficial ownership of the Property, without Lender's prior written consent. For purposes hereof, the term "Transfer" means any action by which either (a) the legal or beneficial ownership of the equity or ownership interests in Borrower or (b) the legal or equitable title to the Property, or any part thereof, or (c) the cash flow from the Property or any portion thereof, are sold, assigned, transferred, hypothecated, pledged or otherwise encumbered or disposed of, in each case (a), (b) or (c) whether undertaken, directly or indirectly, or occurring by operation of law or otherwise, including, without limitation, each of the following actions: (i) the sale, conveyance, assignment, grant of an option with respect to, mortgage, deed in trust, pledge, grant of a security interest in, or any other

transfer, as security or otherwise, of the Property or with respect to the Leases or Rents (or any thereof); (ii) the grant of an easement across the Property or any other agreement granting rights in or restricting the use or development of the Property (including, without limitation, air rights); (iii) an installment sale wherein Borrower agrees to sell the Property for a price to be paid in installments; (iv) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder; or (v) the issuance of additional partnership, membership or other equity interests, as applicable.

(b) Payment of Taxes and Other Lienable Charges. Borrower shall pay all Taxes and Other Charges assessed or imposed against the Property prior to delinquency. For purposes hereof, the term "**Taxes**" means all real estate taxes, government assessments or impositions, lienable water charges, lienable sewer rents, assessments due under owner association documents, ground rents, vault charges and license fees for the use of vault chutes and all other charges (other than the Other Charges), now or hereafter levied or assessed against the Land and Improvements. For purposes hereof, the term "**Other Charges**" means all ground rents, maintenance charges, impositions (other than Taxes) and similar charges (including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property), now or hereafter assessed or imposed against the Property, or any part thereof, together with any penalties thereon.

(c) Insurance. Borrower shall obtain and maintain, in full force and effect at all times, all insurance with respect to Borrower and the Property as may be required by the Lender, in its sole discretion, from time to time.

(d) Obligations upon Condemnation or Casualty. All proceeds or awards recovered or payable to Borrower as a result of a casualty or condemnation shall be paid to Lender and applied toward the payment of the Debt.

(e) Leases and Rents. Borrower shall not enter into any Leases for all or any portion of the Property unless approved by Lender in writing.

(f) Operating Agreements. Borrower shall observe and perform in a timely manner each and every obligation to be observed or performed by Borrower pursuant to the terms of each Operating Agreement and shall not terminate any Operating Agreement unless otherwise approved by Lender in writing.

(g) Warranty of Title. Borrower has good, marketable and insurable fee simple title of record to the Property, free and clear of all liens, encumbrances and charges whatsoever except for those set forth on the Lender's title policy approved by Lender in connection with the Loan (the "**Permitted Encumbrances**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender and/or Trustee against the claims of all Persons whomsoever.

## ARTICLE 5 **SUBROGATION**

If the Loan is used to pay, satisfy, discharge, extend or renew any indebtedness secured by a pre-existing mortgage, deed of trust or other lien encumbering the Property ("**Prior Lien**"),

then to the extent of funds so used, Lender shall automatically, and without further action on its part, be subrogated to all rights, including lien priority, held by the holder of the indebtedness secured by the Prior Lien, whether or not the Prior Lien is released, and such former rights are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for payment of the Debt and performance of the Obligations.

## ARTICLE 6 DEFAULT

6.01 Events of Default. The occurrence of an "Event of Default" as that term is defined under the Note shall constitute an "Event of Default" under this Security Instrument.

6.02 Remedies. If an Event of Default occurs, Lender may, at its option, acting directly or through Trustee and without prior notice or demand, exercise, and hereby is authorized and empowered by Borrower so to exercise, any or all of the remedies set forth in this Security Instrument (including, without limitation, the right to accelerate the Loan) or otherwise permitted by law or in equity.

6.03 Cumulative Remedies; No Waiver; Other Security. Lender's remedies under this Security Instrument are cumulative with the remedies provided in the other Loan Documents, by law or in equity and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default shall not be deemed a waiver of such right as remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Borrower in any instance will not entitle Borrower to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Security Instrument to be given). Lender may release other security for the Debt, may release any party liable for the Debt, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Debt, in each case without prejudice to its rights under this Security Instrument and without such action being deemed an accord and satisfaction or a reinstatement of the Debt. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies.

6.04 Enforcement Costs. Borrower shall pay, on written demand by Lender, all costs incurred by Lender in (a) collecting any amount payable under the Loan Documents, or (b) enforcing its rights under the Loan Documents, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals, law clerks and other hired professionals, a reasonable assessment of the cost of services performed by Lender's default management staff, court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings, including discovery, and costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Lender shall be added to the Debt, shall be immediately due and payable, and shall bear interest at the default rate set forth in the Note from the date of disbursement until paid in full, if not paid in full within five (5) days after Lender's written demand for payment.



6.05 Application of Proceeds. The proceeds from disposition of the Property shall be applied by Lender to the payment of the Debt (including, without limitation, advances made by Lender and enforcement costs incurred by Lender) in such priority and proportion as Lender determines in its sole discretion.

6.06 Continuing Lien; Right to Release Property. If less than all of the Property is, at any time, sold through foreclosure, power of sale, or otherwise, or if Lender releases any portion of the Property (for whatever consideration Lender deems appropriate), this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property, unimpaired and without loss of priority.

## ARTICLE 7

### WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS

7.01 Waiver of Rights of Redemption, Marshalling and Other Rights. Borrower hereby waives, to the fullest extent permitted by law, the benefit of all laws, now or hereafter in force, providing for (a) the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof pursuant to this Security Instrument or any decree, judgment or order of a court of competent jurisdiction; (b) the right to stay or extend any such proceeding, to have this Security Instrument reinstated or to redeem the Property or any portion thereof so sold; (c) rights of marshalling relating to any such sale or sales; (d) any right to require that the Property be sold as separate tracts or units in connection with enforcement of this Security Instrument; and (e) the benefit of any moratorium, exemption or homestead rights now or hereafter provided. Borrower makes such waivers on its own behalf and on behalf of all parties now or hereafter claiming or having an interest (direct or indirect) by, through or under Borrower.

7.02 Waiver of Counterclaim. Borrower hereby waives, to the fullest extent permitted by law, the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Trustee or Lender arising out of, or in any way connected with, the Obligations.

7.03 Waiver of Foreclosure Defense. Borrower hereby waives, to the fullest extent permitted by law, any defense Borrower might have by reason of Lender's failure to make any tenant or tenant of the Property a party defendant in any foreclosure instituted by Lender.

7.04 Waiver of Notices Generally. Borrower hereby waives, to the fullest extent permitted by law, its rights to notice from Lender except when this Security Instrument or the other Loan Documents expressly provides for Lender to give notice to Borrower.

7.05 Waiver of Statute of Limitations and Laches. Borrower hereby waives, to the fullest extent permitted by law, the benefit of any statute of limitations or laches defense to payment of the Debt or performance of the Obligations.

7.06 WAIVER OF TRIAL BY JURY. BORROWER WAIVES ITS RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER.

7.07 Consent to Jurisdiction. Borrower hereby consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Land is located with respect to any legal action or proceeding arising with respect to this Security Instrument or any other Loan Document 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 herein provided.

## **ARTICLE 8**

### **GENERAL INDEMNIFICATION**

8.01 In addition to any other indemnifications provided herein or in the other Loan Documents, Borrower shall protect, defend, indemnify and save harmless the Indemnified Parties (defined below) from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender or any Indemnified Party by reason of any of the following: (a) ownership of this Security Instrument or the Property or any interest therein; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Security Instrument; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (f) any failure of the Property to comply with any applicable laws; (g) any representation or warranty made in the Note, this Security Instrument or the other Loan Documents being false or misleading in any respect as of the date such representation or warranty was made; (h) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof under any legal requirement or any liability asserted against Lender with respect thereto; (i) the claims of any lessee of all or any portion of the Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; (j) claims of any persons arising under or as a consequence of any of the Operating Agreements or any other material agreement or instrument affecting or pertaining to the Property, including, without limitation, instruments constituting Permitted Exceptions; and (k) claims of any person who holds any participation or syndication arrangement relating to the Loan as a result of the events described in clauses (a) through and including (k) above. Any amounts payable to Lender by reason of the application of this Article shall be due and payable within five (5) days after demand by Lender, shall be secured by this Security Instrument and shall bear interest at the default rate set forth in the Note from the date loss or damage is sustained by Lender until paid. Notwithstanding the foregoing, Borrower shall not be liable for any losses incurred by Lender arising solely as a result of Lender's gross negligence or willful misconduct. The obligations and liabilities of Borrower under this Article shall survive any termination, satisfaction or assignment of this Security Instrument or the entry of a judgment of foreclosure, sale of the Property by nonjudicial foreclosure sale, or delivery of a conveyance in lieu of foreclosure.

**ARTICLE 9**  
**TRUSTEE PROVISIONS**

9.01 Trustee's Fees and Expenses. Borrower shall pay all reasonable fees and expenses incurred by Trustee for legal counsel and other professional advisors in connection with Trustee's performance of its duties hereunder. Amounts incurred by Trustee shall be deemed a part of the Debt secured by this Security Instrument and bear interest at the default rate set forth in the Note if not paid in full within five (5) days after Trustee's written demand for payment. Trustee hereby waives any statutory fee or compensation for services rendered hereunder.

9.02 Duties of Trustee.

(a) Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts and duties herein created and conferred upon Trustee. Notwithstanding the foregoing, Trustee agrees not to execute any of the powers conferred upon Trustee hereunder, nor to take any action to protect or enforce Lender's rights hereunder, nor to provide any interpretation of this Security Instrument or any of the other Loan Documents without Lender's prior written consent thereto in each instance. Trustee, however, has an affirmative duty to reasonably cooperate with Lender as Lender may require to protect the Property and to enforce Lender's rights hereunder, but Trustee shall not be obligated to institute or defend any suit in respect hereof or to perform any act which would involve Trustee in any expense or liability unless, in each case, properly indemnified to Trustee's reasonable satisfaction. Trustee also has no duty to see to any recording, filing or registration of this Security Instrument or any other instrument in addition or supplemental hereto, or to give any notice thereof: or to see to the payment of, or be under any duty in respect of, any tax or assessment or other governmental charge which may be levied or assessed on the Property or against Borrower, or to see to the performance or observance by Borrower of any of the covenants and agreements contained herein. Trustee shall not be responsible for the sufficiency of the security purported to be created hereby and makes no representation or warranty in respect thereof or in respect of the rights of Lender.

(b) Trustee shall not be liable for any error of judgment or act done by Trustee in good faith or otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee has the right to advice of counsel upon any matters arising hereunder and shall be fully protected in relying on the advice of counsel. Trustee has the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall not be personally liable in case of entry upon the Property by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, or for liability or damages incurred in the management or operation of the Property.

(c) All money received by Trustee with respect to the Debt and Obligations 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.

### 9.03 Resignation and Substitution of Trustee.

(a) Trustee may resign at any time upon written notice to Lender delivered not less than thirty (30) days prior to the intended date of resignation. In the event of Trustee's death, resignation, refusal to act, disqualification or other inability to act, or if Lender shall deem it desirable to remove Trustee for any reason with or without cause, Lender has the right, in its sole discretion, to select and appoint a successor trustee (who may be Lender or an affiliate of Lender if permitted by law), without application to court or compliance with any formality other than appointment and designation in writing by Lender or as otherwise required by law. If Lender is a corporation or association and such appointment is executed in its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association.

(b) Any successor appointed as Trustee shall, without further act, deed or conveyance other than as required by law, become vested with all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee with like effect as if such successor were originally named as trustee herein. Nevertheless, upon the written request of Lender or of the successor as Trustee, the party ceasing to act as Trustee shall execute and deliver an instrument, in recordable form, transferring to such successor as Trustee, all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee and shall duly assign, transfer and deliver to such successor, in trust, any of the property and money then held by the party ceasing to act as Trustee.

9.04 Multiple Trustees. If more than one Trustee is appointed hereunder at any one time, or from time to time, all rights granted to and all powers conferred upon Trustee hereunder may be exercised by any or all of such Trustees, independently or jointly. Action exercised by one Trustee shall be deemed valid and binding on all Trustees.

## ARTICLE 10 LOCAL LAW PROVISIONS

The provisions set forth below control in the event of any conflict with the other terms of this Security Instrument. Nothing in this Article dealing with foreclosure procedures or specifying particular actions to be taken by Lender shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah law, and any such inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

10.01 Power of Sale. Should Lender elect to foreclose by exercise of the power of sale herein contained, then upon request of Lender, Trustee shall sell the Property (including the Personal Property, if Lender so elects) at public auction for cash, after having first given such notices, obtained such findings or leave of court, and advertised the time and place of such sale in such manner as may then be required by law, and upon any sale or resale in compliance with such statutes to convey title to the purchaser in fee simple. Such sale or sales may be made in one parcel, or as separate parcels, as Trustee in its discretion deems to be in the best interest of the parties.

10.02 Remedies. If an Event of Default shall have occurred and is continuing, Lender may foreclose the lien of this Security Instrument pursuant to the power of sale hereby granted or by judicial proceeding. Trustee is hereby granted a power of sale and may sell the Property, or such part or parts thereof or interests therein as Lender may select after first having given such notice as to commencement of foreclosure proceedings and obtained such findings or leave of court as then may be required by law and then having given such notice and advertised the time and place of such sale in such manner as then may be provided by law, and upon such sale and any resale and upon compliance with the law then relating to foreclosure proceedings, to convey title to the purchaser. Following a foreclosure sale, Trustee shall deliver to the purchaser Trustee's deed (and bill of sale as to any Personal Property) conveying the property so sold without covenant or warranty, expressed or implied. The recitals in Trustee's deed shall be prima facie evidence of the statements made therein.

10.03 Waiver. Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

10.04 Attorney's Fees. All references to "attorneys' fees" herein shall be deemed to be "reasonable attorneys' fees".

10.05 Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real property records of the county or counties where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts and is to be filed for record in the real property records of the county where the Property is situated. The mailing address of Borrower and Lender are set forth on the first page hereof.

## ARTICLE 11 ENVIRONMENTAL INDEMNITY

### 11.01 Definitions

(a) "Environmental Law" means any present or future federal, state or local law, statute, ordinance, rule, regulation, code, policy, rule of common law (including without limitation nuisance and trespass), consent order, judicial order, administrative order or other government directive, in each case as amended or supplemented from time to time, that applies to Borrower or to the Property and relates to Hazardous Materials including, without limitation, those relating to industrial hygiene, Mold or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Any soil or groundwater contaminated by Hazardous Materials at the Property in quantities or concentrations violative of the most stringent applicable federal, state or local standard or guidance or which required reporting, investigation, remediation or other response action is considered for purposes of this Security Instrument a violation of an

Environmental Law. Environmental Laws include, without limitation, those acts commonly referred to as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"); the Superfund Amendments and Reauthorization Act; the National Environmental Policy Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including, without limitation, Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; and the Occupational Safety and Health Act.

(b) "**Environmental Liens**" means all liens and other encumbrances imposed on the Property pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other party.

(c) "**Government Authority**" means the state, county and municipality in which the Property is located, the United States Environmental Protection Agency, the United States Department of Labor, the United States Department of Transportation, any successors to the foregoing or administrative bodies thereunder, and any other federal, state or local governmental agency now or hereafter regulating Hazardous Materials, industrial hygiene, health or environmental protection.

(d) "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including, without limitation, gasoline, diesel fuel and oil; toxic, corrosive, infectious, carcinogenic, mutagenic, explosive and flammable materials; radioactive materials; polychlorinated biphenyls ("**PCBs**") and compounds containing them; lead and lead-based paint ("**LBP**"); asbestos or asbestos-containing materials ("**ACM**") in any form that is or could become friable; urea formaldehyde foam insulation; radon gas; Mold; underground or above-ground storage tanks, whether empty or containing any substance; and any and all substances (whether solid, liquid or gas) now or in the future which are regulated by Environmental Laws.

(e) "**Indemnified Parties**" means (i) Lender; (ii) any party now or hereafter involved in servicing of the Loan; (iii) any party in whose name this Security Instrument is now or hereafter recorded; (iv) any party who now holds or hereafter holds a full or partial interest as an investor in the Loan (including, without limitation, those who acquire an interest in mortgage pass-through certificates or other securities evidencing a beneficial interest in the Loan and trustees, custodians or other fiduciaries who hold or may have held an interest in the Loan for the benefit of third parties); (v) any receiver or other fiduciary appointed in a foreclosure or other creditors' rights proceeding; (vi) all officers, directors, principals, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of the foregoing; and (vii) the heirs, legal representatives, successors and assigns of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial part of an Indemnified Party's assets and business), in all cases whether during the term of the Loan or as part of, or following, a foreclosure Judicial or otherwise) of the Security Instrument or acceptance of a deed-in-lieu of foreclosure.

(f) "**Legal Action**" means any claim, suit, arbitration or proceeding, whether judicial or administrative in nature, including, without limitation, any notice of potential liability or request for information under CERCLA.

(g) **"Losses"** means any and all claims (including, without limitation, personal injury, wrongful death, property damage, natural resource damages, strict liability and punitive damages), obligations, damages, losses, expenses, fines, penalties, fees, judgments, awards, amounts paid in settlement, costs of Remediation whether or not performed voluntarily (including, without limitation, any financial assurances required to be posted for completion of Remediation and costs associated with administrative oversight), reasonable legal fees and disbursements, engineering fees, environmental consultant fees, investigation costs (including without limitation sampling, testing and analysis of soil, water, air, building or other materials), costs of defense of Legal Actions, costs incurred by a Government Authority to the extent recoverable against private parties, and any other liabilities of whatever kind or nature.

(h) **"Mold"** means any microbial or fungus contamination or infestation in the Property of a type which may pose a risk to human health or the environment or would negatively impact the value of the Property.

(i) **"Permit"** means any permit or license issued by any Government Authority pursuant to any of the Environmental Laws and which relate to Borrower or the Property.

(j) **"Release"** means any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposal or other movement of Hazardous Materials.

(k) **"Remediation"** means any activity, response, remediation, removal, or corrective action to clean-up, detoxify, decontaminate, close, contain or otherwise remediate any Hazardous Materials located in, on, under or above the Property or migrating to or from the Property; any actions to prevent, cure or mitigate any Release or threat of release; any action to comply with any Environmental Law or Permit; and any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Materials, including, without limitation, post-remedial or post-closure studies, investigations, operations and maintenance and monitoring. Remediation of Mold shall include, without limitation, all acts necessary to clean and disinfect any portions of the Property affected by Mold and to eliminate the sources of Mold in or on the Property, including, without limitation, providing any necessary moisture control systems at the Property.

11.02 Covenants. Borrower covenants and agrees that, until the Loan is paid in full:

(a) Compliance. The condition and all uses and operations on or of the Property, whether by Borrower, its tenants or any other party, shall be in compliance with all Environmental Laws and Permits.

(b) No Hazardous Materials. No Hazardous Materials shall be in, on, at, or under the Property except those that are both (i) used in compliance with all Environmental Laws and Permits and (ii) either (A) used in the ordinary course of the operation of the Property or (B) fully disclosed to Lender by Borrower in writing and approved in advance by Lender.

(c) No Release. No Release of Hazardous Materials shall occur in, on, at, under or from the Property.

(d) No Encumbrances. Borrower shall keep the Property free and clear of all Environmental Liens.

(e) Investigations. Borrower, at its sole expense, shall (i) perform any environmental site assessment or other investigation of environmental conditions in connection with the Property (including, without limitation, sampling, testing and analysis of soil, water, air, building materials and other materials and substances, whether solid, liquid or gas), pursuant to Lender's written request upon Lender's reasonable belief that the Property is not in full compliance with Environmental Laws or Permits or that any requirement of this Security Instrument has been violated and (ii) if requested by Lender, share all reports, results and correspondence related to such assessments or investigations with Lender. Borrower agrees to have any written reports structured so as to allow Lender (and any other party designated by Lender) to rely on such reports and results.

(f) Remediation. Borrower, at its sole expense, shall (i) effectuate Remediation of Hazardous Materials in, on, or under the Property to the extent required by Environmental Law, (ii) comply in all material respects with any Environmental Law or Permit, (iii) comply with any directive from any Government Authority, and (iv) if requested by Lender, share all reports, results and correspondence related to such Remediation or compliance with Lender. Borrower agrees to have any written reports prepared so as to allow Lender (and any other party designated by Lender) to rely on such reports and results.

(g) Notice of Release or Violation. Borrower shall promptly notify Lender in writing upon its obtaining knowledge of (i) Hazardous Materials present in, on, at, or under the Property, or any Release from or migrating toward the Property which is required to be reported to any Government Authority under any Environmental Law or is in violation of any Environmental Law, (ii) any actual or alleged (in writing) violation of any Environmental Law or Permit, (iii) any actual or threatened (in writing) Environmental Lien affecting the Property, (iv) any required Remediation or actual or threatened (in writing) investigation of any environmental condition related to the Property, or (v) any Legal Action in connection with any matter addressed by this Security Instrument. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant reasonably acceptable to Lender to complete any required Remediation or correct any violation of Environmental Law. If such cost estimate exceeds \$10,000.00, Borrower shall promptly establish with Lender, upon Lender's written request, a reserve fund in the amount of such estimate. If in Lender's reasonable opinion the amount reserved at any time during the Remediation or the correction of a violation is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender's written request. All amounts so held in reserve, until disbursed, are pledged to Lender as security for payment of the Loan and performance of the Obligations, including, without limitation, Remediation.

(h) Inspections and Testing. Lender, and any other party designated by Lender (including, without limitation, any environmental consultant or any receiver or trustee for the Property appointed by a court of competent jurisdiction), has the right, but not the obligation, after reasonable prior notice to Borrower (which may be telephonic if an Event of Default under any of the Loan Documents has occurred and is continuing), to enter upon the Property at all reasonable times to assess the environmental condition of the Property, including, without limitation, to conduct any environmental assessment or audit (the scope of which shall be



determined in Lender's sole discretion) and to take samples of soil, groundwater or other water, air quality, building materials and conduct other invasive testing. Such assessment or audit shall be conducted in a manner so as to minimize interference with the conduct of business at the Property. Borrower agrees to reasonably cooperate in connection therewith, including without limitation, providing all requested information and making knowledgeable officers, employees or property managers available for interview. If any such undertaking discloses that a violation of, or a liability under, any Environmental Law or Permit exists, or if such undertaking was required or prescribed by any Environmental Law, Permit or Government Authority, or if the inspection is performed while an Event of Default exists under any of the Loan Documents, Borrower shall pay all costs and expenses incurred in connection with such undertaking; otherwise, the costs and expenses of such undertaking shall be paid by Lender.

(i) Monitoring or Maintenance Program. If recommended by an environmental assessment or audit now existing or hereafter made of the Property, or if required by Environmental Law or Government Authority, Borrower, at its sole expense, shall establish and maintain continuously in effect until the Loan is paid in full, an operations and maintenance program with respect to any ACMs, PCBs, LBP or Mold at the Property ("O&M Program"), which is reasonably acceptable to Lender and prepared by an environmental consultant reasonably acceptable to Lender. Without limiting the foregoing, if ACMs are found to exist at the Property, the O&M Program shall be undertaken consistent with all the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Environmental Laws. If an O&M Program is in effect, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including without limitation variations in response to report is provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program reasonably satisfactory to Lender. If not covered by an O&M Program, Borrower shall inspect and maintain all ACMs, PCBs, LBPs, or Mold, as the case may be, on a regular basis to ensure that such Hazardous Materials are maintained in a condition that prevents exposure of occupants of the Property.

11.03 Indemnification. Borrower shall indemnify, defend, release and hold harmless the Indemnified Parties from and against any and all Losses incurred by or asserted against any Indemnified Parties (other than those arising solely from the gross negligence of an Indemnified Party or a state of facts, in each case, that first occurs or comes into existence after the date that the holder of the Security Instrument or a receiver takes possession of the Property or acquires title to the Property by foreclosure or deed in lieu of foreclosure), and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Materials in, on, above, under or migrating to or from the Property; (b) any past, present or threatened Release in, on, above, under or migrating to or from the Property; (c) any activity by any Borrower, a party affiliated with any Borrower, or any tenant or other user of the Property (irrespective of whether such use was authorized) in connection with any actual, proposed or threatened Release, use, treatment, storage, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Materials at any time located in, on, under, or above the Property; (d) any Remediation, whether voluntary or pursuant to court or administrative order; (e) any violation of any Environmental Law or Permit with respect to the Property or operations thereon, including, without limitation, any failure by any Borrower, any

party affiliated with any Borrower, or any tenant or other user of the Property to comply with any Permit or any directive of any Government Authority pursuant to any Environmental Law even if such claim of noncompliance or violation is groundless, false or fraudulent; (f) the imposition of any Environmental Lien encumbering the Property; (g) any injury to, destruction of, or loss of natural resources in any way connected with the Property, including, without limitation, costs to investigate and assess such injury, destruction or loss; (h) any personal injury, wrongful death, or damage to property caused by any of the foregoing; (i) any acts of any Borrower, any party affiliated with any Borrower, or any tenant or other user of the Property in connection with the disposal or treatment, whether done directly or arranged through a transporter, of Hazardous Materials at any facility or incineration vessel containing such or similar Hazardous Materials in the event of a Release during transportation to or following deposit at such facility; (j) any intentional misrepresentation or inaccuracy in any representation or warranty hereunder as of the date made hereunder; (k) any material breach of this Security Instrument; or (l) any Legal Action in any way connected with any matter addressed in this Security Instrument.

11.04 Duty to Defend. All legal counsel and other professionals to be engaged by Borrower in connection with any defense or investigation required by Security Instrument shall be reasonably acceptable to Lender and the other Indemnified Parties. Borrower's legal counsel shall control defense of the claim or proceeding, except that no settlement or compromise shall be accepted or entered into which binds an Indemnified Party unless such Indemnified Party has given its prior written consent thereto, which consent will not be unreasonably withheld. Notwithstanding the foregoing, if the interest of an Indemnified Party, in its reasonable judgment, conflicts with, or is adverse to, the interest of Borrower, the party seeking indemnification under this Security Instrument shall have the option to engage its own legal counsel and other professionals to defend it or assist it and, at the option of such Indemnified Party, to control resolution of such claim or proceeding. In such event, Borrower shall pay or, at the Indemnified Party's option, reimburse it for the reasonable fees and expenses of its legal counsel and other professionals.

11.05 Claims against Third-Party Rights. Borrower shall take all reasonable actions, including institution of Legal Action against third-parties, necessary or appropriate to obtain reimbursement or compensation from those responsible for the presence or Release of any Hazardous Materials in, on, under or from the Property, or which have migrated onto or toward the Property, or for which such third-parties are otherwise obligated by law to bear the cost. Indemnified Parties shall be and hereby are subrogated to all of Borrower's rights now or hereafter in such claims.

11.06 Notice of Legal Actions. Borrower shall, within seven (7) days of receipt thereof, give written notice to Lender of (a) any written notice or other communication from any Government Authority or other source whatsoever or with respect to Hazardous Materials affecting the Property or regarding compliance with Environmental Laws, and (b) any Legal Action brought with respect to which Borrower may have liability under this Security Instrument.

**ARTICLE 12**  
**MISCELLANEOUS**

12.01 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's members, partners and others with interests in Borrower, and of the Property, or to a sale in inverse order of alienation in the event of foreclosure of all or any of this Security Instrument and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the real properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the this Security Instrument, any equitable right otherwise available to Borrower which would require the separate sale of the real properties secured thereby or require Lender to exhaust its remedies against any real property secured thereby or any combination thereof before proceeding against any other properties secured thereby; and further in the event of such foreclosure Borrower hereby expressly consents to and authorizes, at the option of Lender, the foreclosure and sale either separately or together of any combination of the real properties secured thereby.

12.02 Further Acts. Borrower, at Borrower's expense, agrees to take such further actions and execute such further documents as Lender reasonably may request to carry out the intent of this Security Instrument or to establish and protect the rights and remedies created or intended to be created in favor of Lender hereunder or to protect the value of the Property and the Liens and security hereby created in favor of Lender. Borrower agrees to pay all filing, registration or recording fees or taxes, and all expenses incident to the preparation, execution, acknowledgment or filing/recording of this Security Instrument or any such instrument of further assurance, except where prohibited by law so to do.

12.03 No Third Party Beneficiary. Notwithstanding any provision of this Security Instrument to the contrary, this Security Instrument is not intended by the parties to create, and shall not create, benefits on behalf of any tenant or other occupant of the Property or anyone claiming rights through any tenant or other occupant of the Property.

12.04 No Agency or Partnership. Nothing contained in this Security Instrument shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

12.05 Authority. Borrower represents and warrants that: (a) it has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, give, grant, bargain, sell, alien, convey, confirm, warrant, pledge, hypothecate and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed; and (b) Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

12.06 Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of: (a) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise to enforce any of the provisions hereof or of the Note or the other Loan Documents; (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

12.07 Amendment. This Security Instrument, 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 Lender, 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.

12.08 Usury Savings. This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt or Loan charges at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt or Loan charges at a rate in excess of such maximum rate, the rate of interest or loan charges under the Note and the other Loan Documents shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments or loan charges in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt or for Loan charges shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

12.09 Severability. If any term, covenant or condition of this Security Instrument is held to be invalid, illegal or unenforceable in any respect, this Security Instrument shall be construed without such provision.

12.10 Assignment. Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument. Borrower shall not, without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion, assign or transfer its rights under this Security Instrument or any of the Loan Documents.

12.11 Governing Law; Jurisdiction. This Security Instrument will be governed and construed in accordance with the laws of the State of Utah (without regard to conflict of law provisions thereof).

12.12 Request for Notice. Borrower and Lender request that a copy of any notice of default and a copy of any notice of sale under any trust deed, tax or assessment lien filed for

record against the Property be mailed to Borrower and Lender at their addresses set forth at the outset of this Security Instrument.

*[Remainder of page is blank; signatures appear on next page.]*

IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Security Instrument.

Kyle Jessee, Borrower and Guarantor:

By: 

Date: Dec 30, 2024

Spencer Crocker, Borrower and Guarantor:

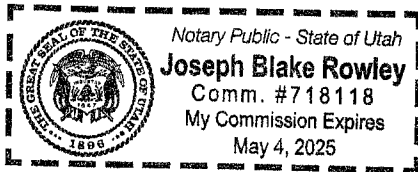
By: 

Date: Dec 30, 2024

INDIVIDUAL

State of Utah                    )  
  )ss.  
County of Salt Lake        )

On the 30<sup>th</sup> day of December A.D. 2024, personally appeared before me, Kyle Jessee, the signer of the within instrument who duly acknowledged to me that he executed the above instrument.

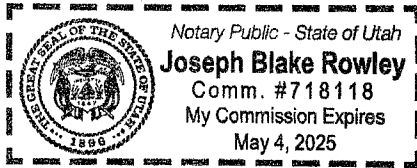


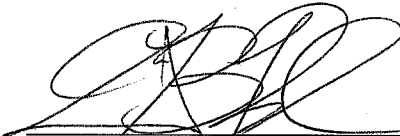
  
NOTARY PUBLIC

INDIVIDUAL

State of Utah                 )  
  )ss.  
County of Salt Lake         )

On the 30<sup>th</sup> day of December A.D. 2024, personally appeared before me, Spencer Crocker, the signer of the within instrument who duly acknowledged to me that he executed the above instrument.



  
\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT A****Description of the Land**

The land referred to in this Deed of Trust is located in Utah County, Utah and is described as: Beginning at a point located South 00°43'43" East along the Section line 80.79 feet and West 1220.86 feet from the Northeast corner of Section 6, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 00°10'00" West along a fenceline 258.62 feet; thence North 89°47'52" West along a fenceline 96.21 feet; thence North 00°50'10" West along a fenceline 14.25 feet; thence North 89°43'43" West 173.87 feet to a point on the Easterly boundary line of 900 East Street; thence along said Easterly boundary line as follows: North 00°27'02" East 47.92 feet; North 00°35'07" West 196.58 feet; thence South 89°43'43" East along the Southerly boundary line of Chatham Towne Condominiums 272.68 feet to the point of beginning.

Said property is also known by the street address of:  
910 North 900 East, Provo, Utah 84604  
Tax Parcel No. 22:015:0080