

WHEN RECORDED RETURN TO:  
INTERMOUNTAIN TITLE & ESCROW AGENCY INC.  
File # W-14420-22



\*W3214547\*

E# 3214547 PG 1 OF 5  
Leann H. Kilts, WEBER COUNTY RECORDER  
31-Jan-22 0330 PM FEE \$40.00 DEP SLV  
REC FOR: INTERMOUNTAIN TITLE INSURANCE & E  
ELECTRONICALLY RECORDED

**Construction Trust Deed**

THIS TRUST DEED is made this 21 st day of JANUARY, 2022  
SCOTT LINDSAY CONSTRUCTION INC. By: Scott Lindsay, President,  
of: 2668 GRANT AVENUE SUITE 200, OGDEN, UTAH 84401

as TRUSTORS,

INTERMOUNTAIN TITLE INSURANCE AND ESCROW AGENCY INC.,  
of:4630 SOUTH 3500 WEST, SUITE 4, WEST HAVEN, UT 84401, and,

as TRUSTEE,

AFFILIATED FINANCIAL GROUP TRUST ISAOA, ATIMA -  
C/O INTERMOUNTAIN TITLE INSURANCE  
AND ESCROW AGENCY INC. AS TRUSTEES  
of 4630 SOUTH 3500 WEST SUITE 4, WEST HAVEN, UTAH 84401

BENEFICIARY.

WITNESSETH:

Trustor conveys and warrants to trustee in trust, with power of sale, the following described property (hereinafter referred to as the "Property"), situated in WEBER County, State of Utah:

Property Address: 2353 NORTH 3825 WEST PLAIN CITY, UTAH 84404

ALL OF LOT 309, TAYLOR PARKS PHASE 3, PLAIN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.  
24-159-0009

FOR THE PURPOSE OF SECURING:

1. Payment of the indebtedness evidenced by a Promissory Note of even date herewith, in the principal sum of **\$370,000.00**, made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest, together with any extensions and/or renewals or modifications thereof.
2. The performance of each agreement of Trustor herein contained.
3. The payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and have the right to grant and convey the Property, this trust deed will be a first lien position, and that Trustor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the property.

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

1. Trustor shall keep and maintain or cause to be kept and maintained all buildings and improvements now or at any time hereafter erected on the Property and the sidewalks and curbs abutting them, in good order and condition and in a rentable and tenantable state of repair, and will make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. Trustor shall abstain from and shall not permit the commission of waste in or about the Property: shall not remove or demolish, or alter the structural character of, any building erected at any time on the Property, without the prior written consent of Beneficiary; and shall not permit the Property to become vacant, deserted or unguarded. Trustor shall not permit any lien or claim to be filed against the Property, or any part thereof; provided, however, that if any such lien or claim is filed against the Property or any part thereof, Trustor shall have a period of ten (10) days from the date of such filing to cause such lien or claim to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

If the loan hereby or any part thereof is being obtained for the purpose of financing construction of improvements of said 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 the Construction Loan Agreement:
- (b) To allow Beneficiary to inspect said Property at all times during construction; and
- (c) To abide by and comply with the terms of all other documents given as security for the subject loan ("the loan documents").

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

2. 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 said Property. Said insurance may not be required by Beneficiary to exceed the amount of the obligation owing by Trustor to Beneficiary under this Trust Deed and the Promissory Note which it secures. Such insurance shall be carried by companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustors 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. At the option of the Beneficiary, a receipt demonstrating payment in full for all such premiums shall be delivered to Beneficiary not later than ten (10) days prior to the expiration date of all such policies as Beneficiary has required.

3. 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 any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said 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.

5. To pay at least 10 days before delinquency all taxes and assessments affecting said Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said Property; to pay, when due, all encumbrances, charges, and liens, with interest, on said Property or any part thereof, which at any time appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. At the option of the Beneficiary, Trustor shall deliver a paid receipt evidencing payment of all of the foregoing not later than sixty (60) days following the due date.

6. Should Trustor fail to make any payment or to do any act as herein provided or provided under the Note or any other document serving as additional security, then Beneficiary or Trustee, but without obligation to 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 said Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or 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.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of twenty percent (20%) per annum until paid, and the repayment thereof shall be secured hereby.

8. Trustor shall furnish to Beneficiary:

(a) Such information from time to time regarding Trustor's business affairs and financial condition as Beneficiary may reasonably request;

(b) Within 90 days after the end of each fiscal year of Beneficiary, a copy of Trustor's annual, unqualified, audited consolidated balance sheet and statements of income, retained earnings, capital surplus and capital stock, as of the end of each fiscal year, prepared by an independent certified public accountant acceptable to Beneficiary in accordance with generally accepted accounting principles consistently applied.

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(c) Within 90 days after the end of each fiscal year of Trustor, Trustor shall deliver to Beneficiary complete financial statements setting forth all details of the operation of the Property, including an itemized list of rentals and expenses on the Property, a profit and loss statement, balance sheet and reconciliation of surplus, which statements shall be certified by Trustor and, if Beneficiary shall require, by an independent certified public accountant acceptable to Beneficiary. Trustor shall furnish, together with the foregoing financial statements and at any other time upon Beneficiary's request, a rent schedule for the Property, certified by Trustors answering the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, and the rent paid.

9. If all or any part of the Property or an interest therein is sold or transferred by Trustor without Beneficiary's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Beneficiary shall have waived such option to accelerate if, prior to the sale or transfer, Beneficiary and the person to whom the interest payable on the sums secured by this Deed of Trust shall be at such rate as Beneficiary shall request. If Beneficiary has waived the option to accelerate provided in this paragraph and if Trustor's successor in interest has executed a written assumption agreement accepted in writing by Beneficiary, Beneficiary shall release Trustor from all obligations under this Deed of Trust and the Note.

10. Should said Property or any part thereof be taken or damaged by reason of any public improvement of 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 to the extent of the outstanding balance of Trustor's obligation to Beneficiary under this Trust Deed and the Promissory Note which it secures, 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 said Property, are hereby assigned to Beneficiary who, after deducting therefrom all its expenses, including attorney's fees, may 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. All amounts collected in excess of the said indebtedness shall be paid to Trustor's.

11. Trustor represents that there are no toxic wastes or other toxic or hazardous substances or materials being generated, stored or otherwise used or held on, under or about the mortgaged property, or being transported to, from or across the mortgaged property, by Trustor or, to the best of Trustor's knowledge, any other person, and Trustor shall at no time permit the same. Trustor represents that it has not, and to the best of its knowledge no other person or other entity has, released or otherwise discharged any such wastes, substances or materials on, under or about the mortgaged property. In the event that any such wastes, substances or materials are hereafter found or otherwise exist on, under or about the mortgaged property, Trustor shall take all necessary and appropriate actions and shall spend all necessary sums to cause the same to be cleaned up and immediately removed, and Beneficiary shall in no event be liable or responsible for any costs or expenses incurred in so doing. Trustor represents that no portion of the mortgaged property is within two thousand (2,000) feet of a toxic waste or hazardous substances problem, or is otherwise subject to any "borderzone" legislation or other restrictions on the construction, sale or occupancy of residential dwellings under any of the laws described below or other environmental protection laws. Trustor shall at all times observe and satisfy the requirements of and maintain the mortgaged property in compliance with all federal, state and local environmental protection, occupational, health and safety or similar laws, ordinances restrictions, licenses, and regulations, including but not limited to the Federal Water Pollution Prevention and Control Act (33 U.S.C., Section 1251 et.seq.), Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et.seq.) Safe Drinking Water Act (42 U.S.C., Section 300f et.seq.), Toxic Substances Control Act (15 U.S.C., Section 2601 et.seq.), the Clean Air Act (42 U.S.C., Section 7401 et.seq.) and Comprehensive Environmental Response of Compensation and Liability Act (42 U.S.C., Section 9601 et.seq.). Should Trustor at any time default in or fail to perform or observe any of its obligations under this paragraph, Beneficiary shall have the right, but not the duty, without limitation upon any of Beneficiary's rights pursuant thereto, to perform the same, and Trustor agrees to pay to Beneficiary, on demand, all costs and expenses incurred by Beneficiary in connection therewith, including without limitation reasonable attorney's fees, together with interest from the date of expenditures at the Default Rate specified in the Note. Trustor hereby indemnified Beneficiary and agrees to hold Beneficiary harmless from and against any loss incurred by or liability imposed on Beneficiary by reason of (i) Trustor's failure to perform or observe any of its obligations or agreements under this paragraph, or (ii) any of its representations under this paragraph having been materially incorrect, including without limitation any and all attorney's fees and costs incurred in connection with any lawsuit or court action, or any proceeding before or involving any state of federal or other regulatory agency or other government agency. Trustor further agrees that it shall indemnify, defend and hold Beneficiary harmless from and against any claim, action, suit, proceeding, loss, costs, damage, liability, deficiency, fine, penalty,

punitive damages or resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any hazardous or toxic wastes or material on, under, in or about or the transportation of any such wastes to or from, the mortgaged property, or (ii) the violation, or alleged violation, of any license relating to the use, generation, release, discharge, storage, disposal or transportation of hazardous or toxic storage, disposal or transportation of hazardous to toxic wastes or materials, on, under, in or about, to or from the mortgaged property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, costs or expense (including without limitation all post-foreclosure cleanup and removal costs and expenses) arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damages, compensation for lost wages, business income, profits, or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release or other adverse affect on the environment. The Obligations of Trustor and the rights of Beneficiary under this paragraph are in addition to and not in substitution of the obligations of Trustor and rights of Beneficiary under the laws and regulations cited above in this paragraph, and any other similar applicable laws. Notwithstanding anything contained herein or in any other documents or agreement which may be construed to the contrary, the obligations and indebtedness of Trustor and the rights of Beneficiary under this paragraph and the laws and regulations cited above in this paragraph, (i) shall not be secured by this Deed of Trust or any of the other documents securing any of the indebtedness secured hereby, and shall not be subject to any anti-deficiency laws, and (ii) shall survive the foreclosure of this Deed of Trust, the repayment of the indebtedness secured hereby and the termination of the Note and other documents evidencing, securing and/or governing the indebtedness secured hereby. As used herein the terms "toxic" or "hazardous" wastes, substances or materials shall include, without limitation, all those so designated and all those in any way regulated by any of the above-cited laws or regulations, or any other present or future environmental or other similar laws or regulations.

12. 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 said 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; or (d) reconvey, without warranty, all or any part of said 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.

13. 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 (Trustors 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 said 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.

14. The entering upon and taking possession of said 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 said 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.

15. The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to the Deed of Trust, (ii) the creation of a purchase money security interest for equipment or appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Beneficiary, in the event of each and every Transfer:

(a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

(b) If a Transfer occurs and Beneficiary does not exercise Beneficiary's option pursuant to this paragraph 15 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The beneficiary may without notice to Borrower deal with Transferee in the same manner as with Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said Funds, without in any way altering or discharging Borrower's liability hereunder for the obligation hereby secured.

(c) Should Beneficiary not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Beneficiary had actual or constructive notice of such Transfer, shall not be deemed a waiver of Beneficiary's right to make such election nor shall Beneficiary be estopped therefrom by virtue thereof. The issuance on behalf of Beneficiary of a routine statement showing the status of the loan, whether or not Beneficiary had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Beneficiary's said rights.

16. 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.

17. 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. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

18. 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 said 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 be determined (but subject to any statutory right of Trustor to direct the order in which such 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. If the sale is postponed for longer than three days 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 conveying said 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 18% per annum from date of expenditure; (4) all other sums then secured thereby; 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.

19. 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.

Signed in the presence of:

SCOTT LINDSAY CONSTRUCTION INC.

By: Scott Lindsay, President

ACKNOWLEDGEMENT

State of Utah )  
(ss.  
County of WEBER )

On the 21st day of JANUARY, 2022 personally appeared before me Scott Lindsay, President of and for SCOTT LINDSAY CONSTRUCTION INC. who being first duly sworn on oath acknowledged before me and affirmed that he voluntarily executed the Trust Deed for the purposes stated therein, and he has read the Trust Deed, knows the contents thereof and that the statements contained therein are true and correct.

Residing At: WEBER County, UT

NOTARY PUBLIC  
My Commission Expires: 11-20-23

