

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

Western Alliance Bank  
5335 Kietzke Lane  
Reno, Nevada 89511  
Attention: Erin Retzer-Stehura

1802103  
14-476-0002

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**DEED OF TRUST AND SECURITY AGREEMENT AND  
FIXTURE FILING WITH ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF RENTS** (the "Deed of Trust") is made as of the 16th day of September, 2022, by **CLINTON CITY CENTER, LLC**, a Utah limited liability company, as trustor (the "Trustor"), to **STEWART TITLE OF UTAH, INC.**, as trustee (the "Trustee"), for the benefit of **WESTERN ALLIANCE BANK**, an Arizona corporation, as beneficiary (the "Beneficiary").

**I. GRANTS AND OBLIGATIONS SECURED.**

**A. Grants.**

1.01. Trustor hereby irrevocably grants, sells, conveys, transfers, warrants, and assigns to Trustee, in trust, for the benefit of Beneficiary, with power of sale and right of entry and possession, all right, title and interest of Trustor in and to that certain real property situated in the County of Davis, State of Utah, described in **Exhibit "A"** attached hereto and made a part hereof (the "Land"), together with all right, title and interest of Trustor, now existing, if any, and hereafter arising in and to the following (it being understood that the Land is currently subject to a Ground Lease dated October 31, 2007, between Trustor as Landlord and Lowe's HIW, Inc., a Washington corporation, as tenant (the "Ground Lease")):

(a) All buildings and other improvements owned by Trustor now or hereafter located on the Land, all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), pumps and pumping stations used in connection therewith and all shares of stock evidencing the same, all machinery, equipment, appliances,

furnishings, inventory, fixtures, and other property owned by Trustor used or useable in connection with the Land and the improvements thereon, including, but not limited to, all storage tanks and pipelines, all gas, electric, heating, cooling, air conditioning, refrigeration and plumbing fixtures and equipment, which have been or may hereafter be attached or affixed in any manner to any building now or hereafter on the Land (the "Improvements").

(b) All the rights, rights of way, easements, licenses, profits, privileges, tenements, hereditaments and appurtenances, now or hereafter in any way appertaining and belonging to or used in connection with the Land and/or the Improvements, and any part thereof or as a means of access thereto, including, but not limited to, any claim at law or in equity, and any after acquired title and reversion in or to each and every part of all streets, roads, highways and alleys adjacent to and adjoining the same.

(c) All rentals, earnings, income, accounts, accounts receivable, deposits, security deposits, receipts, royalties, revenues, issues and profits which, after the date hereof, and while any portion of the indebtedness secured hereby remains unpaid, may accrue from the Land and/or the Improvements and any part thereof, subject, however, to the right, power and authority conferred upon Trustor to collect and apply such proceeds set forth herein.

(d) All deposits made with or other security given to utility companies by Trustor with respect to the Land and/or the Improvements, and all advance payments of insurance premiums made by Trustor with respect thereto and claims or demands relating to insurance. Any of the foregoing arising or acquired by Trustor after the date hereof, the Land, the Improvements, and the other property described in subparagraphs (a), (b), (c), and (d) of this Section 1.01 are collectively defined hereinafter as the "Property".

1.02. Trustor hereby grants a security interest to Beneficiary in all of Trustor's rights, now existing, if any, and hereafter arising, in and to the following described property and any and all proceeds thereof (sometimes all of such being collectively referred to herein as the "Collateral") (for purposes of clarity, the Collateral shall not include any property not owned by Trustor, such as any property of tenant under the Ground Lease):

(a) all existing and future goods and tangible personal property located on the Property or wherever located now owned or hereafter acquired by Trustor and used or useable in connection with the use, operation or occupancy of the Property including, but not limited to, all appliances, equipment and fixtures installed or intended to be installed therein; and all renewals or replacements thereof or articles in substitution thereof;

(b) all general intangibles relating to design, operation, management and use of the Property, including, but not limited to, (i) all permits, licenses, authorizations, variances,

land use entitlements, approvals and consents issued or obtained in connection with the operation and use of the Property, (ii) all materials prepared for filing or filed with any governmental agency, and (iii) all of Trustor's rights under any contract in connection with the development, design, use, operation and management of the Property;

(c) all service, engineering, consulting, leasing, architectural and other similar contracts of any nature as such may be modified, amended or supplemented from time to time, relating to the design, development, construction, management, operation, occupancy, use, and/or disposition of any portion of or all of the Property;

(d) all architectural drawings, plans, specification, soil tests, feasibility studies, appraisals, engineering reports and similar materials relating to any portion of or all of the Property;

(e) all reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the operation, occupancy, use and disposition of any portion of or all of the Property;

(f) all proceeds and claims arising on account of any damage to or taking of the Property or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Property;

(g) all policies of, and proceeds resulting from, insurance relating to the Property or any of the above collateral, and any and all riders, amendments, extensions, renewals, supplements or extensions thereof, and all proceeds thereof;

(h) all shares of stock or other evidence of ownership of any part of the Property that is owned by Trustor in common with others, including all water stock relating to the Property, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and

(i) all proceeds, whether cash, promissory notes, contract rights, or otherwise, of the sale or other disposition of all or any part of the estate of Trustor in and to the Property now or hereafter existing thereon.

The personal property in which Beneficiary has, or may have, a security interest includes goods which are or shall become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to the terms of the Utah Uniform Commercial Code. This filing is to be recorded in the real estate records of the county in which the Property is located. In that regard, the following information is provided:

Name of Debtor: **CLINTON CITY CENTER, LLC**, a Utah limited liability company

Address of Debtor: See Paragraph 5.12

Name of Secured Party: **WESTERN ALLIANCE BANK**, an Arizona corporation

Address of Secured Party: See Paragraph 5.12

Trustor warrants and agrees that there is no financing statement covering the foregoing Collateral, the Property, or any part thereof, on file in any public office, except for those in favor of Beneficiary.

1.03. Trustor hereby assigns and transfers to Beneficiary, as additional security, all damages, royalties and revenue of every kind, nature and description whatsoever that Trustor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property, with the right in Beneficiary to receive and receipt therefor, and apply the same to the indebtedness secured hereby either before or after any default hereunder, and Beneficiary may demand, sue for and recover any such payments but shall not be required to do so.

**B. Obligations Secured.**

1.04. This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may determine:

(a) Payment of the indebtedness evidenced by a Revolving Line of Credit Promissory Note Secured By Deed of Trust of even date herewith and any renewals, extensions, modifications or amendments thereof, in the principal amount of **TEN MILLION AND NO/100THS DOLLARS (\$10,000,000.00)** (the "Note"), executed by Trustor and Millcreek Partners, LLC, a Utah limited liability company ("Millcreek Partners") (Trustor and Millcreek Partners hereinafter referred to collectively as the "Borrower"), and payable to Beneficiary, together with interest thereon and late charges as provided therein, which is made a part hereof by reference. The Note provides for the adjustment of the interest rate thereunder as therein provided. The loan shall be a revolving line of credit and funds may be advanced by Beneficiary, repaid by Borrower, and subsequently readvanced by Beneficiary, subject to Borrower's obligation to reduce the maximum committed amount pursuant to the terms that certain Revolving Line of Credit Loan Agreement of even date herewith between the parties ("Loan Agreement"). Notwithstanding the

amount outstanding at any particular time, this Deed of Trust secures a maximum principal amount specified above, plus all interest, costs and reasonable attorneys' fees as specified in the Note and the Loan Agreement. All advances under the Note and Loan Agreement by Beneficiary are obligatory and are secured by this Deed of Trust. All such obligatory advances and interests and fees thereon will have the same priority as the funds initially advanced under the Note and Loan Agreement. According to the Loan Agreement, the unpaid balance of the loan may at certain times be zero. Notwithstanding this fact, Beneficiary is obligated under the terms of the Loan Agreement to advance to the Borrower up to the amount specified above subject to Borrower's obligation to reduce the maximum committed amount pursuant to the terms of the Note and the Loan Agreement. Therefore, the interest of the Beneficiary will remain in full force and effect, notwithstanding a zero balance under the Note.

(b) Payment of such further sums as Trustor, or any successor in ownership, hereafter may borrow from Beneficiary when evidenced by another note or notes, reciting it is so secured, payable to Beneficiary or order and made by Trustor, or any successor in ownership, and all renewals, extensions, modifications or amendments of such note or notes.

(c) Payment of all other moneys herein agreed or provided to be paid by Trustor and performance of all other obligations of Trustor contained herein and in the Loan Agreement and any amendment, modification or change hereto or thereto, and any other documents executed in connection with the Loan Agreement, including payment of all sums expended or advanced by Beneficiary hereunder, together with interest thereon at the rate payable under the Note, in the preservation, enforcement and realization of the rights of Beneficiary hereunder or under any of the other obligations secured hereby, including, without limitation, attorney's fees, court costs, other litigation expenses and foreclosure expenses.

(d) Performance of each agreement of Trustor contained in any other agreement given by Trustor to Beneficiary which is for the purpose of further securing any indebtedness or obligation secured hereby.

## **II. COVENANTS OF TRUSTOR.**

### **A. Condition and Operation of Property.**

Subject in all respects to Trustor's rights, duties, obligations and limitations under the terms of the Ground Lease:

2.01. Trustor agrees, and agrees to cause the tenant under the Ground Lease, as appropriate (i) to keep the Property in good condition and repair, (ii) not to commit or permit any waste or deterioration of the Property, (iii) not to commit or permit any removal, demolition or

substantial alteration of the Property except for such alterations as may be required by law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Property, (iv) to complete in good and workmanlike manner any construction or restoration which may be performed on the Property, (v) to promptly restore any portion of the Property which may be damaged or destroyed and (vi) not to permit any mechanics' or materialmen's liens against the Property, and (vii) to perform each of Trustor's obligations set forth in the Loan Agreement.

2.02. Trustor shall not commit, permit or allow to exist, any violation of any law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Property or of any matter of record affecting the Property.

**B. Insurance.**

2.04. Trustor shall, at all times, require the tenant under the Ground Lease to maintain in full force and effect the insurance required under the terms of the Ground Lease.

2.05. After the happening of any casualty insured against by the tenant under the Ground Lease, Trustor shall give prompt written notice thereof to Beneficiary.

2.06. Subject to the terms of the Ground Lease, Trustor hereby assigns to Beneficiary all insurance proceeds which it may be entitled to receive and such proceeds shall be delivered to and held by Beneficiary to be applied to the restoration of Trustor's interest in any portion of the Property that has been damaged or destroyed to the same condition, character and value as existed prior to such damage or destruction so long as the following conditions have been satisfied: (i) no Event of Default then exists hereunder, (ii) Beneficiary's security is not materially impaired and (iii) Trustor deposits with it the additional amounts necessary, if any, to accomplish such restoration. The proceeds disbursed for restoration will be released to Trustor under disbursement procedures reasonably required by Beneficiary. In the event that the above conditions are not satisfied, Beneficiary shall have the option, to apply the insurance proceeds upon any indebtedness secured hereby in such order as Beneficiary may determine or release such proceeds to Trustor without such release being deemed a payment of any indebtedness secured hereby, rather than to apply such proceeds to the restoration of the Property. Such application or release shall not cure or waive any Event of Default hereunder or invalidate any act done pursuant to any notice given in connection with any Event of Default. If the Property is restored at a cost less than the available insurance proceeds, then such excess proceeds shall, if no Event of Default then exists hereunder, be paid over to Trustor.

2.07. In the event of the foreclosure of this Deed of Trust, all right, title and interest of Trustor in and to any insurance policy then in force shall pass to the purchaser or grantee to the extent that such insurance policy affects the Property.

**C. Payments.**

2.08. Trustor shall pay the principal, interest and other charges due under the Note and the Loan Agreement according to their terms.

2.09. Subject to the terms of the Ground Lease, Trustor shall pay, or cause the tenant under the Ground Lease to pay:

(a) Prior to the assessment of any penalty or delinquency, all taxes, assessments and other governmental or public charges affecting the Property, including assessments on appurtenant water stock, and any accrued interest, cost and/or penalty thereon and shall submit paid receipt therefor to Beneficiary upon request.

(b) When due, all encumbrances (including any debt secured by deed of trust), ground rents, liens, and/or charges, with interest, on the Property or any part thereof which appear to be prior or superior hereto and all costs, fees and expenses related thereto.

(c) When due, all charges for utilities or services including, but not limited to, electricity, gas, water and sewer.

2.10. Trustor shall pay immediately, upon demand, after expenditure, all sums expended or expenses incurred by Trustee and/or Beneficiary under any of the terms of this Deed of Trust, including without limitation, any fees and expenses (including reasonable attorneys' fees) incurred in connection with any reconveyance of the Property or any portion thereof, or to compel payment of the Note or any portion of the indebtedness evidenced thereby or in connection with any Event of Default thereunder, including without limitation reasonable attorneys' fees incurred in any bankruptcy or judicial or nonjudicial foreclosure proceeding, with interest from date of expenditure at the interest rate then in effect under the Note.

**D. Condemnation.**

2.11. Subject to the terms and provisions of the Ground Lease, if the Property, or any part thereof, is taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor to which Trustor shall be entitled, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such taking or damage to the extent of the interests of Trustor therein. All such compensation, awards, damages, rights of action and proceeds to which Trustor shall be entitled (the "Proceeds") are hereby assigned to Beneficiary, who shall after

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deducting therefrom all its reasonable expenses, including reasonable attorneys' fees, apply or release the Proceeds with the same effect and as provided in Paragraph 2.06 above with respect to disposition of insurance proceeds; provided, that if there are any excess Proceeds after application thereof to the restoration of the Property, Beneficiary shall be entitled to apply such excess to the reduction of the principal balance due under the Note without any adjustment in the dollar amount of the monthly installments due under the Note. Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require. Nothing herein contained shall prevent the accrual of interest as provided in the Note on any portion of the Proceeds to be applied to the principal balance due under the Note until the Proceeds are received by Beneficiary.

**E. Rents and Leases.**

2.12. Trustor shall not accept prepayments of rent for any period in excess of one month and shall perform all covenants of the landlord under the Ground Lease. Beneficiary shall have the right but not the obligation, to cure any default of Trustor under the Ground Lease and all amounts disbursed in connection with said cure shall be deemed to be disbursements under the Loan Agreement.

2.13. The Ground Lease shall be subordinate to the lien of this Deed of Trust pursuant to the execution of a Mortgagee Nondisturbance Agreement executed by Beneficiary, Trustor and the tenant under the Ground Lease.

2.14. Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the leases, income, rent, issues, deposits, profits and proceeds of the Property to which Trustor may be entitled, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such income, rents, issues, deposits, profits and proceeds of the Property to which Trustor may be entitled, whether now due, past due or to become due. This assignment constitutes an irrevocable direction and authorization of all tenants under any lease, including the Ground Lease, to pay all rent, income and profits into an account specified by Beneficiary upon demand and without further consent or other action by Trustor. Trustor irrevocably appoints Beneficiary its true and lawful attorney, at the option of Beneficiary at any time, to demand, receive and enforce payment, to give receipts, releases, and satisfactions, and to sue, either in the name of Trustor or in the name of Beneficiary, for all such income, rents, issues, deposits, profits and proceeds and apply the same to the indebtedness secured hereby. It is understood and agreed that neither the foregoing assignment of leases, income, rents, issues, deposits, profits and proceeds to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies under this Paragraph 2.14 or under Paragraph 2.24 hereof shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof. Notwithstanding anything to the contrary contained herein or in the Note secured hereunder, so long



as no Event of Default has occurred and is continuing, Trustor shall have a license to collect all income, rents, issues, profits and proceeds from the Property as trustee for the benefit of Beneficiary and Trustor shall apply the funds so collected as set forth in the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, such license shall be deemed revoked and any rents received thereafter by Trustor shall be delivered in kind to Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Trustor hereby irrevocably constitutes and appoints Beneficiary its true and lawful attorney-in-fact to enforce in Trustor's name or in Beneficiary's name or otherwise all rights of Trustor in the instruments, including without limitation checks and money orders, tendered as payments of rents and to do any and all things necessary and proper to carry out the purposes hereof. Notwithstanding any other provision set forth herein, Beneficiary's and Trustor's rights, obligations, and remedies with respect to any rents and leases referred to herein shall be governed by the Utah Uniform Assignment of Rents Act contained in Section 57-26-101 et seq. of the Utah Code Annotated and amended from time to time.

**F. Other Rights and Obligations.**

2.15. In addition to any other grant, transfer or assignment effectuated hereby, without in any manner limiting the generality of the grants in Article I hereof, Trustor shall assign to Beneficiary Trustor's interest in all agreements, contracts, leases, licenses and permits affecting the Property in any manner whatsoever, such assignments to be made, if so requested by Beneficiary, by instruments in form satisfactory to Beneficiary but no such assignment shall be construed as a consent by Beneficiary to any agreement, contract, license or permit so assigned, or to impose upon Beneficiary any obligations with respect thereto.

2.16. In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of the Property for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of deeds of trust or debts secured by deeds of trust, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, or imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property upon the Beneficiary, the indebtedness secured hereby shall immediately become due and payable at the option of the Beneficiary; provided, however, that such election by Beneficiary shall be ineffective if such law either (a) shall not impose a tax upon Beneficiary nor increase any tax now payable by Beneficiary or (b) shall impose a tax upon Beneficiary or increase any tax now payable by Beneficiary and prior to the due date: (i) Trustor is permitted by law and can become legally obligated to pay such tax or the increased portion thereof (in addition to all interest, additional interest and other charges payable hereunder and under the Note without exceeding the applicable limits imposed by the usury laws under applicable law); (ii) Trustor does pay such tax or increased portion; and (iii) Trustor agrees with Beneficiary in writing to pay, or reimburse Beneficiary for the payment of, any such tax or increased portion thereof when thereafter levied or assessed against the

Property or any portion thereof. The obligations of Trustor under such agreement shall be secured hereby.

2.17. If required by Beneficiary at any time during the term of this Deed of Trust, Trustor will execute and deliver to Beneficiary, in form satisfactory to Beneficiary, an additional security agreement and/or financing statement covering all personal property of Trustor which may at any time be furnished, placed on, or annexed or made appurtenant to the Property and used, useful or held for use, in the operation of the improvements thereon. Any breach of or default under such security agreement shall constitute an Event of Default under this Deed of Trust.

2.18. Trustor shall do any and all acts which, from the character or use of the Property or the Collateral, may be reasonably necessary to protect and preserve the security of Beneficiary, the specific enumerations herein not excluding the general.

2.19. Trustor will faithfully perform each and every covenant to be performed by Trustor under any lien or encumbrance upon or affecting the Property, including, without limiting the generality hereof, mortgages, deeds of trust, leases, declaration of covenants, easements, conditions and/or restrictions and other agreements which affect the Property, in law or in equity, which Beneficiary reasonably believes may be prior and superior to the lien or charge of this Deed of Trust. A breach of or a default under any such lien or encumbrance shall constitute an Event of Default under this Deed of Trust.

2.20. Upon election of either Beneficiary or Trustee so to do, employment of an attorney is authorized and payment by Trustor of all reasonable attorneys' fees, costs and expenses in connection with any action and/or actions (including the cost of evidence or search of title), which may be brought for the foreclosure of this Deed of Trust, and/or for possession of the property covered hereby, and/or for the appointment of a receiver, and/or for the enforcement of any covenant or right in this Deed of Trust contained as hereinafter provided shall be secured hereby.

2.21. No personal property owned by Trustor now or hereafter and covered by the security interest granted herein may be removed from the Property without the prior written consent of Beneficiary unless Trustor shall immediately replace such personal property with similar property of equivalent value on which Beneficiary has a valid first lien.

2.22. Except for the Ground Lease, in the event that the interest of Trustor in the Property, or any part thereof, or any interest therein is sold, conveyed, alienated, further encumbered or otherwise transferred by the Trustor, voluntarily or involuntarily, whether by operation of law or otherwise, the Note, irrespective of the maturity dates expressed therein, at the option of Beneficiary, and without demand or notice, shall immediately become due and payable. In the event that Beneficiary does not elect to declare the Note immediately due and payable, then, unless indicated

otherwise in writing by Beneficiary, Trustor shall nevertheless remain primarily liable for the obligations hereunder and under the Note and any other instrument securing the Note. This provision shall apply to each and every sale, conveyance, alienation, encumbrance or transfer, regardless whether or not Beneficiary has consented to, or waived, Beneficiary's rights hereunder, whether by action or non-action in connection with any previous sale, conveyance, alienation, encumbrance or transfer and whether or not the holder has received any payments after said transfer.

2.23. Trustor agrees to execute such documents and take such action as Beneficiary shall reasonably determine to be necessary or desirable to further evidence, perfect or continue the perfection of the lien and security interest granted by Trustor herein.

2.24. Following a ten (10) day written notice to Trustor (unless Beneficiary reasonably determines that emergency circumstances exist which would make the giving of such notice impractical), at the time and in the manner herein provided, Beneficiary may, without releasing Trustor from any obligation hereunder and without waiving its right to declare a default or impairing any declaration of default as herein provided or any sale proceeding predicated thereon:

(a) Make any payment or perform any act in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary and Trustee being authorized to enter upon and take possession of the Property for such purposes;

(b) Commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security therefor, the interests, rights, powers and/or duties of Trustee and/or Beneficiary hereunder, whether brought by or against Trustor, Trustee or Beneficiary;

(c) Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the reasonable judgment of Beneficiary may affect or appear to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and/or duties of Trustee and/or Beneficiary hereunder; and

(d) Upon the occurrence and during the continuance of an Event of Default, Beneficiary is authorized either by itself or by its agents to be appointed by it for that purpose or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the Property, both real and personal, and exclude Trustor and all other persons therefrom; and to operate and manage the Property and rent and lease the same, perform such reasonable acts of repair or protection as may be reasonably necessary or proper to conserve the value thereof, and collect any and all income, rents, issues, profits and proceeds therefrom, the same being hereby assigned and transferred to Beneficiary for the benefit and protection of Beneficiary, and from time to time apply and/or accumulate such income, rents,

issues, profits and proceeds in such order and manner as Beneficiary or such receiver in its sole discretion shall consider advisable, to or upon the following: the expense of receivership, if any, the proper costs of upkeep, maintenance, repair and/or operation of the Property, the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust upon the indebtedness secured hereby, the taxes and assessments upon the Property then due or next to become due, and/or upon the unpaid principal of such indebtedness. The collection and/or receipt of income, rents, issues, profits and/or proceeds from the Property by Beneficiary, its agent or receiver, after declaration of an Event of Default and election to cause the Property to be sold under and pursuant to the terms of this Deed of Trust shall not affect or impair such Event of Default or declaration of default or election to cause the Property to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt and/or collection of any such income, rents, issues, profits and/or proceeds. Any such income, rents, issues, profits and/or proceeds in the possession of Beneficiary, its agent or receiver, at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale. Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this Paragraph and any of the actions referred to in this Paragraph may be taken by Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness evidenced by the Note.

Notwithstanding any other provision set forth herein, the rights of Trustee, Beneficiary, and Trustor with respect to Trustee's rights and obligations are governed by Utah Code Annotated Section 57-1-1 et seq. and the related interpretive case law.

### **III. DEFAULTS AND REMEDIES.**

#### **A. Defaults.**

3.01. Subject to any applicable notice requirement and opportunity to cure, Trustor shall be in default hereunder upon the breach of any covenant or warranty contained herein, or if an Event of Default shall have occurred and be continuing under the Loan Agreement, the Note, or any other obligation secured hereby (each and "Event of Default").

#### **B. Remedies.**

3.02. Upon the occurrence and during the continuance of an Event of Default, then and in each such event, Beneficiary may declare all sums secured hereby immediately due and payable either by commencing an action to foreclose this Deed of Trust as a mortgage, or by the delivery to Trustee of a written declaration of default and demand for sale and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly

filed for record in case of foreclosure by exercise of the power of sale herein. Should Beneficiary elect to foreclose by exercise of the power of sale herein, Beneficiary shall also deposit with Trustee this Deed of Trust, the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require, and notice of sale having been given as then required by law and after lapse of such time as may then be required by law after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed or deeds conveying the Property, or any portion thereof, so sold, but without any covenant or warranty, express or implied. The recitals in such deed or deeds of any matters or facts, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale.

3.03. Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause the Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause the Property to be sold to satisfy the obligations hereof, nor otherwise affect any provision, agreement, covenant or condition of the Note, the Loan Agreement and/or of this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder.

3.04. After deducting all costs, fees and expenses of Trustee and of this Trust, including the cost of evidence of title in connection with sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale as required by applicable law.

3.05. If Beneficiary at any time holds additional security for any obligations secured hereby, it may enforce the terms hereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the indebtedness secured hereby without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security.

3.06. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall

be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

3.07. Subject to any notice requirement and opportunity to cure contained herein, upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under it, and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

#### **IV. COLLATERAL.**

4.01. Subject to the Ground Lease, with respect to the security interest granted in paragraph 1.02, Beneficiary shall have all the rights and remedies granted to a secured party under Article 9 of the Uniform Commercial Code, as well as all other rights and remedies available at law or in equity. Trustor shall, upon the demand of Beneficiary, assemble all of such personal property of Trustor and make it available to Beneficiary at the Property, which is hereby agreed to be reasonably convenient to Beneficiary. The proceeds of any sale of such personal property shall be applied first to the expenses of Beneficiary in retaking, holding, preparing for sale, selling or similar matters, including reasonable attorney's fees.

4.02. Until Beneficiary exercises its right to collect proceeds of the Collateral pursuant hereto, Trustor will collect with diligence any and all proceeds of the Collateral. Upon written request by Beneficiary, any proceeds received by Trustor shall be in trust for Beneficiary, and Trustor shall keep all such collections separate and apart from all other funds and property so as to be capable of identification as the property of Beneficiary and shall deliver such collections at such time as Beneficiary may request to Beneficiary in the identical form received, properly endorsed or assigned when required to enable Beneficiary to complete collection thereof.

4.03. Trustor shall (i) upon reasonable prior written notice, permit representatives of Beneficiary to inspect the Collateral and Trustor's books and records relating to the Collateral and make extracts therefrom and to arrange for verification of the amount of Collateral, under procedures acceptable to Beneficiary, at Trustor's expense; (ii) promptly notify Beneficiary of any attachment or other legal process levied against any of the Collateral and any information received by Trustor

relative to the Collateral, Trustor's debtors or other persons obligated in connection therewith, which may in any way affect the value of the Collateral or the rights and remedies of Beneficiary in respect thereto; (iii) reimburse Beneficiary upon demand for any and all costs, including without limitation reasonable attorneys' and accountants' fees, and other expenses incurred in collecting any sums payable by Trustor under any obligation secured hereby, or in the checking, handling and collection of the Collateral and the preparation and enforcement of any agreement relating thereto; (iv) notify Beneficiary of each location at which the Collateral is or will be kept, other than for temporary processing, storage or similar purposes, and of any removal thereof to a new location, including without limitation each office of Trustor at which records relating to the Collateral are kept; (v) provide, maintain and deliver to Beneficiary certificates of insurance insuring the Collateral against loss or damage by such risks and in such amounts, forms and by such companies as Beneficiary may require and with loss payable to Beneficiary, and in the event Beneficiary takes possession of the Collateral, the insurance policy or policies and any unearned or returned premium thereon shall at the option of Beneficiary become the sole property of Beneficiary; (vi) do all acts necessary to maintain, preserve and protect all Collateral, keep all Collateral in good condition and repair and prevent any waste or unusual or unreasonable depreciation thereof; and (vii) join with Beneficiary at its request from time to time in authorizing financing statements, amendments thereto and continuation statements, and pay the cost of the filing of the same whenever Beneficiary deems desirable, and execute and deliver to Beneficiary further documents and instruments and do such other acts and things as Beneficiary may reasonably request in order to effectuate fully the purposes and intent hereof. Trustor hereby authorizes Beneficiary to file financing statements, amendments, and continuation statements in such filing offices as Beneficiary may determine appropriate in connection with the security interest granted herein.

4.04. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may at any time, without prior notice to Trustor, collect proceeds of the Collateral and may give notice of assignment to any and all of Trustor's debtors, and Trustor does hereby irrevocably constitute and appoint Beneficiary its true and lawful attorney-in-fact to enforce in Trustor's name or in Beneficiary's name or otherwise all rights of Trustor in the Collateral and to do any and all things necessary and proper to carry out the purposes hereof; provided, however, Trustor shall have the right to collect, retain, use and enjoy such proceeds subject to the terms hereof and the documents securing Trustor's obligations thereunder prior to the occurrence of an Event of Default. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable and Beneficiary shall have the right to exercise this power of attorney upon any default under the Loan Agreement, hereunder or any of the documents securing Trustor's obligations thereunder. (Beneficiary shall promptly notify Trustor of any action taken by Beneficiary pursuant to this provision but Beneficiary's failure to do so shall not invalidate any such act, affect any of Trustor's obligations to Beneficiary or give rise to any right, claim or defense on the part of Trustor).

**V. MISCELLANEOUS PROVISIONS.**

5.01. By accepting payment of any sum secured hereby after its due date or in an amount less than the sum due, Beneficiary does not waive its rights either to require prompt payment when due of all other sums so secured or to declare the occurrence of an Event of Default as herein provided for failure to pay the total sum due.

5.02. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may: reconvey any part of the Property; consent in writing to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

5.03. Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Deed of Trust.

5.04. Beneficiary is authorized by itself, its agents, employees or workmen, upon reasonable written notice, and subject to the Ground Lease, to enter at any reasonable time during normal business hours upon any part of the Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of the Loan Agreement and this Deed of Trust.

5.05. Subject to the provisions of Paragraph 2.22 hereof, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note, now or hereafter and whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

5.06. Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary, setting forth any fact or facts showing a default by Trustor under any of the terms or conditions of this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon.

5.07. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust.



5.08. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The Trust created hereby is irrevocable by Trustor.

5.09. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee shall be a party, unless brought by Trustee, or of any pending sale under any other deed of trust.

5.10. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county or counties where the Property is located, substitute a successor or successors for the Trustee named herein or acting hereunder.

5.11. The right to plead any and all statutes of limitation as a defense to any demand secured by this Deed of Trust is hereby waived to the full extent permitted by law.

5.12. All notices hereunder shall be deemed to have been duly given if personally delivered or mailed by United States registered or certified mail, with return receipt requested, postage prepaid to the parties at the following addresses (or at such other addresses as shall be given in writing upon any party to the others) and shall be deemed complete upon any such mailing:

To Trustor: **Clinton City Center, LLC**  
**1178 W. Legacy Crossing Blvd.**  
**Suite 100**  
**Centerville, Utah 84014**

To Beneficiary: **Western Alliance Bank**  
**5335 Kietzke Lane**  
**Reno, Nevada 89511**

5.13. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth above.

5.14. Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender to Trustee of this Deed of Trust and the Note for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5.15. Without affecting the liability or obligations of any person, including Trustor, for the performance of any obligations secured hereby (excepting only any person or property otherwise expressly released in writing by Beneficiary), Beneficiary may from time to time and without notice release any person liable for payment of any of said indebtedness or the performance of said obligations, extend the time of payment or otherwise alter the terms of any of said obligations, accept additional security therefor of any kind, including trust deeds or mortgages, or alter, substitute or release any property securing said obligations.

5.16. Notwithstanding the fact that the Note, Loan Agreement and certain other loan documents executed in connection therewith are governed by Nevada law, the provisions of this Deed of Trust relating to the creation, perfection and enforcement of the lien hereof shall be governed by the laws of the State of Utah. The provisions of this Deed of Trust are intended to be supplemental and in addition to the provisions contained in the Loan Agreement. Any assignment of this Deed of Trust shall be considered an assignment of the Note and the Loan Agreement.

5.17. This Deed of Trust may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

5.18 TRUSTOR AND BENEFICIARY HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG TRUSTOR AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust And Security Agreement And Fixture Filing With Assignment of Rents as of the day first written above.

**CLINTON CITY CENTER, LLC, a  
Utah limited liability company**

By:   
**SPENCER H. WRIGHT  
Manager**

**"Trustor"**

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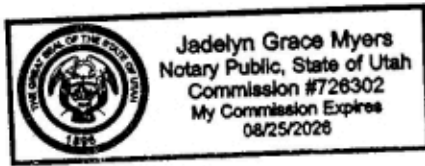
Holland & Hart  
Reno, Nevada  
(775) 327-3000

STATE OF UTAH )

COUNTY OF DAVIS )

)ss.  
)

This instrument was acknowledged before me on September 19, 2022, by Spencer H. Wright, Manager of Clinton City Center, LLC.



Jadelyn Grace Myers  
Notary Public  
My Commission Expires: 9/25/24

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**Parcel 1:**

Lot 2, PARK PLAZA SUBDIVISION 2nd AMENDMENT, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah.

**PARCEL 1A:**

Benefits, Rights of Ingress and Egress and other Easements as, contained in Easements Covenants, Conditions and Restrictions recorded November 20, 2007 as Entry No. 2322284, in Book 4413, Page 1462, of Official Records, and Reciprocal Easement Agreement With Covenants, Conditions and Restrictions, recorded March 14, 2008, as Entry No. 2348867, in Book 4490, Page 134, of Official Records.

Tax ID: 14-476-0002