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**PREPARED BY AND RETURN TO:**

William Terry Pickren  
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Atlanta, Georgia 30303

STATE OF UTAH  
COUNTY OF DAVIS  
TAX/PARCEL ID: 11-494-0038  
PROPERTY ADDRESS: 1539 Misty Breeze Circle, Kaysville, Utah 84037

**TRUST DEED**

This Trust Deed (this "Deed") is made and entered into on December 13<sup>th</sup>, 2023, by and between JONATHAN A. DONIGAN (collectively, whether one or more, the "Trustor"), whose address is 1539 Misty Breeze Circle, Kaysville, Utah 84037, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY (the "Trustee"), whose address is 365 West 1550 North, Suite A, Layton, Utah 84041 and LIVE OAK BANKING COMPANY (the "Beneficiary"), whose address is 1741 Tiburon Drive, Wilmington, North Carolina 28403.

**RECITALS:**

NORTH OGDEN SURGERY CENTER LLC, a Utah limited liability company (collectively, whether one or more, the "Borrower") executed and delivered to Beneficiary that certain SBA Note (the "Note") dated on or about the date of this Deed, which evidences the indebtedness of Borrower to Beneficiary in the original principal amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) (the "Loan"), which is due and payable on June 13, 2034 unless accelerated or extended pursuant to the terms thereof. The term "Note" as used in this Deed shall be inclusive of any and all future replacements, renewals, extensions, increases, substitutions and other modifications thereof.

This Deed is given to secure the obligations of Trustor under that certain SBA Guarantee dated on or about the date of this Deed (collectively, whether one or more, the "Guarantee"), wherein Trustor guaranteed payment of all indebtedness owed by Borrower to Beneficiary under the Note.

All references to the term "Indebtedness" as used in this Deed shall mean the duties, obligations and liabilities of Trustor under the Guarantee and does not represent any funds advanced to Trustor by Beneficiary, but rather funds advanced to Borrower under the Note.

To secure Trustor's obligations to Beneficiary under the Guarantee and any other documents, agreements or instruments of any kind made by Trustor in connection with the Loan (collectively, the "Loan Documents"), Trustor agrees to pledge the Property (as defined below) known as 1539 Misty Breeze Circle, Kaysville, Utah 84037 as collateral to secure the Loan.

NOW, THEREFORE, for good and valuable consideration contained in this Deed, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree to be bound as follows:

*ARTICLE I*  
DEED OF PROPERTY

1.1 PROPERTY. In order to secure payment of the principal indebtedness and interest due under the Note, the performance and observance of all of the covenants, agreements and provisions contained in this Deed and the Loan Documents, the payment of all Expenditures (as defined below) and payment of all other amounts which may be or become due or required to be paid to Beneficiary under the Note, this Deed, the Loan Documents or any other agreement between Trustor and Beneficiary (collectively, the "Indebtedness"), Trustor does hereby DEED, WARRANT, GRANT AND CONVEY unto Trustee, its successors and assigns forever, IN TRUST, WITH POWER OF SALE, the following described property, rights, proceeds, titles and interests located in the State of Utah, County of DAVIS: (i) the real property legally described in Exhibit "A" attached hereto and made a part hereof (the "Land"), together with (ii) all buildings, structures and improvements of every nature which may be or become located on the Land (collectively, the "Improvements"), together with (iii) all fixtures, trade fixtures, machinery, equipment, building supplies and personal property of every nature now or hereafter acquired which may be or become located upon or attached to the Land or Improvements, including all additions, renewals, substitutions, and replacements thereof (collectively, the "Fixtures"), together with (iv) the benefit of any income, security deposits, escrows, revenues, profits, rents, royalties, insurance proceeds, sale proceeds, condemnation proceeds and payments of every nature now or hereafter made or owed relating to the Land, the Improvements and the Fixtures (collectively, the "Rents"), together with (v) all claims, rights of first refusals, easements, rights-of-way, streets, alleys, sewer rights, water and mineral rights and powers relating to the Land, the Improvements and the Fixtures (collectively, the "Rights"), together with (vi) all leases, subleases, contracts, occupancy agreements, licenses and agreements of every nature relating to possession or use of the Land and Improvements and all renewals, modifications, extensions, and replacements thereof (collectively, the "Leases") (the Land, the Improvements, the Fixtures, the Rents, the Rights and the Leases shall collectively be referred to as the "Property"). The term "Expenditures" as used in this Deed shall mean all sums advanced by and costs paid or incurred by Trustee and/or Beneficiary, including, but not limited to (i) reasonable attorney's fees and other legal expenses of Trustee and/or Beneficiary in connection with the Note, this Deed and the Loan Documents, including, but not limited to fees and expenses of Beneficiary in connection with litigation, alternative dispute resolution proceeding, bankruptcy proceeding, appeals and judgment collection services; (ii) payment of Taxes (as defined below) by Beneficiary; (iii) payment of Premiums (as

defined below) by Beneficiary; (iv) all costs of taking, preserving, insuring, repairing, holding and selling the Property, including, but not limited to, appraiser's fees, publication costs, title examinations and all other costs relating to the Property which Trustee and/or Beneficiary deems reasonably necessary to proceed with a sale of the Property. All Expenditures shall become part of the Indebtedness and be immediately payable from Trustor to Beneficiary without notice or demand.

1.2 **TRUSTEE**. Trustee shall act as the duly executed trustee of this Deed in accordance with the laws of the State of Utah. Beneficiary may at any time, as provided for by laws of the State of Utah, appoint another Trustee in place of the trustee named within this Deed, at which time Trustee shall be discharged and the new trustee appointed in lieu thereof. Trustee is not obligated to notify any party hereto of any pending sale under this Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party.

#### *ARTICLE II* REPRESENTATIONS AND WARRANTIES OF TRUSTOR

Trustor, understanding that Beneficiary is relying upon Trustor's representations and warranties set forth below in making the Loan, represents and warrants to Beneficiary as follows:

2.1 **VALID DEED**. Trustor has duly authorized the execution and delivery of this Deed which constitutes a legal, valid, enforceable and binding transfer of the Property to Trustee.

2.2 **LITIGATION**. There is no litigation, investigation, proceeding, claim, dispute or other similar action pending or threatened against the Property, including, but not limited to condemnation, rezoning or eminent domain proceedings.

2.3 **OWNERSHIP OF PROPERTY**. Trustor owns free and clear title to the Property, except for those items set forth in Exhibit "B" attached hereto and made a part hereof (the "Permitted Exceptions"). Except for this Deed and the Permitted Exceptions, Trustor has not entered into, granted or permitted the filing or attachment of any liens or security interests against the Property. Trustor further represents and warrants that title to Property is held in Trustor's exact legal name and is properly reflected in this Deed.

2.4 **ACCURACY OF REPRESENTATIONS AND WARRANTIES**. All representations and warranties by Trustor contained in this Deed are true and correct. There is no material fact or circumstance that Trustor has knowledge of which has not been disclosed to Beneficiary.

#### *ARTICLE III* COVENANTS AND AGREEMENTS OF TRUSTOR

Until all the obligations under the Loan as evidenced by this Deed, the Note and the Loan Documents have been performed and paid in full, Trustor covenants and agrees as follows:

3.1 **ADVERSE CHANGES AND LITIGATION**. Trustor shall immediately inform Beneficiary of (i) any material adverse change in the financial condition of Trustor or the Property; and (ii) any litigation, threatened litigation, investigation, proceeding, claim dispute or other

similar action pending or threatened against Trustor or the Property, including, but not limited to condemnation, rezoning or eminent domain proceedings.

**3.2 TITLE TO PROPERTY.** Trustor covenants and agrees that, except for this Deed and the Permitted Exceptions, Trustor shall not create, incur or permit any encumbrance, pledge or lien upon or against the Property. Trustor will provide written notice to Beneficiary of any encumbrance, pledge or lien upon the Property, regardless of whether such lien is superior or inferior to the lien of this Deed, within three (3) days after Trustor obtains knowledge of same, actual or constructive. Trustor will forever defend title to the Property against and shall promptly pay, remove and discharge all claims, encumbrances, pledges and liens upon the Property, except for the lien of this Deed and the Permitted Exceptions, at Trustor's sole cost and expense. If Trustor fails to defend, pay, remove and discharge all claims, encumbrances, pledges and liens upon the Property as set forth herein, then Beneficiary may, in addition to all other rights and remedies of Beneficiary, elect to defend, pay, remove and discharge same.

**3.3 EXAMINATION OF PROPERTY.** Upon three (3) days written notice, Trustor shall permit any representative of Beneficiary to visit, examine, inspect, and test the Property as Beneficiary deems reasonably appropriate to ensure Trustor's compliance with this Deed, at Trustor's sole cost and expense.

**3.4 PRESERVATION AND RESTORATION OF PROPERTY.** Trustor agrees to (i) repair and maintain the Property in such conditions reasonably satisfactory to Beneficiary; (ii) comply with all statutes, orders, requirements, or laws relating to the Property; (iii) permit no changes in the zoning classification of the Property; and (iv) not permit or allow any demolition, relocation, or other alteration of the Property without the prior written consent of Beneficiary. Trustor shall obtain the prior written consent of Beneficiary before commencing excavation, demolition, construction or any material alteration of any kind upon the Property, and all such construction or alterations shall be completed in strict compliance with plans and specifications approved in writing by Beneficiary.

**3.5 USE OF PROPERTY.** Trustor covenants and agrees that the Property shall be exclusively used for residential purposes. Trustor shall not allow or permit any other uses of the Property nor shall Trustor abandon the Property without the express prior written consent of Beneficiary.

**3.6 STRICT COMPLIANCE.** Trustor shall (i) perform and comply, in a timely manner, with all terms, conditions, and provisions of this Deed and the Loan Documents; and (ii) immediately notify Beneficiary in writing of an Event of Default in connection with this Deed.

**ARTICLE IV**  
**INSURANCE**

**4.1 INSURANCE.** Trustor shall maintain insurance in the following amounts, types and against such hazards and liabilities upon the Property (collectively, the "Insurance Policies"): (i) homeowner's insurance against loss or damage by fire, lightning, windstorm, hail, explosion, water and smoke damage, demolition, earthquake and any casualty of any nature, in an amount equal to one hundred percent (100%) of the Full Replacement Cost; (ii) such other insurance on the Property as reasonably required by Beneficiary. The term "Full Replacement Cost" shall mean

the cost of replacing the Improvements, the Fixtures or any other part of the Property, as determined in Beneficiary's sole and absolute discretion. All Insurance Policies shall be in form and substance and with insurance companies reasonably satisfactory to Beneficiary, and Trustor shall deliver evidence of same as Beneficiary may request. Beneficiary shall be designated as lender's loss payee, mortgagee, additional insured or such other designation as Beneficiary may elect under any such policies. Trustor shall (i) immediately inform Beneficiary of any fact, circumstance, loss, casualty or other damage to the Property which may give rise to a claim under any of the Insurance Policies; and (ii) not materially modify or substitute any Insurance Policies without first providing ten (10) days written notice to Beneficiary.

**4.2 INSURANCE DURING AN EVENT OF DEFAULT.** Trustor shall promptly pay, when due, all insurance premiums (the "Premiums") for the Insurance Policies. Following an Event of Default (as defined below), Beneficiary may require Trustor to escrow funds for payment of the Premiums for the Insurance Policies (collectively, the "Insurance Escrow"). If Beneficiary elects to require an Insurance Escrow, Trustor shall (i) deposit funds in such amounts deemed necessary by Beneficiary to fully fund the Insurance Escrow for the payment of up to twelve (12) months of future Premiums; and (ii) on the 1<sup>st</sup> day of each month during the occurrence and continuation of any Event of Default, an amount equal to 1/12 of the annual Premiums for all Insurance Policies. All contributions from Trustor into the Insurance Escrow shall be based on reasonable estimates determined by Beneficiary and made by direct deposit, electronic transfer, or by any other method designated by Beneficiary. Beneficiary shall pay, when due, all Premiums from the Insurance Escrow in such order and priority as determined in Beneficiary's sole and absolute discretion. In the event of a deficiency in the Insurance Escrow, (i) Trustor shall immediately remit such delinquent amounts to Beneficiary; and (ii) Beneficiary may elect to advance funds to pay the Premiums which shall become part of the Indebtedness and be immediately payable from Trustor to Beneficiary. When the Indebtedness has been fully paid, any remaining funds in the Insurance Escrow shall be refunded to Trustor. Further, if at any time during the Loan, Trustor fails to procure or maintain adequate Insurance Policies upon the Property, Beneficiary may procure, substitute and force place all such Insurance Policies, the costs and expenses of which shall become part of the Indebtedness and Trustor shall immediately reimburse Beneficiary for same. The Insurance Escrow shall be held by Beneficiary in a non-interest-bearing account. In the event of a sale of the Property, the Insurance Escrow shall become property of Beneficiary, who shall apply such funds in such order and priority as determined in Beneficiary's sole and absolute discretion.

**4.3 PROCEEDS OF INSURANCE.** Any claim, payment, reimbursement or other compensation paid under any Insurance Policies (collectively, the "Insurance Proceeds") shall be used to restore, repair, replace or rebuild the Property to of at least equal value and of substantially the same character prior to such loss or damage in accordance with plans, specifications and procedures submitted to and approved in writing by Beneficiary. Any surplus which may remain out of the Insurance Proceeds after payment of such costs of restoration, repair, replacement or rebuilding shall be applied to the Indebtedness. If the Insurance Proceeds are insufficient to restore, repair, replace or rebuild the Property as set forth herein, Trustor shall immediately deposit such amounts deemed reasonably necessary by Beneficiary to cover such deficiencies. Trustor shall not accept any payment or claim upon any Insurance Policies without providing thirty (30) days written notice to Beneficiary. Notwithstanding the foregoing, if an Event of Default (as defined below) has occurred and is continuing at any time when a claim, payment, reimbursement or other compensation related to Insurance Proceeds are filed or paid, then Beneficiary shall be

authorized and empowered to (i) disburse the Insurance Proceeds in any order or priority determined in Beneficiary's sole and absolute discretion, including, but not limited to, applying such funds to the Indebtedness; and (ii) settle and adjust any claim under such Insurance Policies without the consent of Trustor. The Expenditures of Beneficiary in connection with the adjustment and collection of Insurance Proceeds shall add to and become part of the Indebtedness and shall be reimbursed to Beneficiary upon demand. If applicable, the Insurance Proceeds shall be held by Beneficiary in a non-interest-bearing account. In the event of a sale of the Property, the Insurance Proceeds shall become property of Beneficiary, who shall apply such funds in such order and priority and as determined in Beneficiary's sole and absolute discretion.

*ARTICLE V*  
TAXES

5.1 PAYMENT OF TAXES. Trustor shall pay or cause to be paid when due, all general and special taxes, personal property taxes, water, sewer and utility charges, levies, fees and assessments of every nature against or relating to the Property (collectively, the "Taxes"). All Taxes shall be paid prior to incurring any late penalty, fee or charge and shall be paid within the period provided by applicable law for the maximum allowable discount. Trustor shall immediately provide Beneficiary with evidence of such payment of Taxes upon demand. Notwithstanding the foregoing, Trustor may, in good faith and with reasonable diligence, appeal, contest or cause to be contested the validity or amount of any such Taxes, provided that Trustor: (i) notifies Beneficiary in writing prior to initiating any appeal of Taxes; (ii) has made and will continue to make payments of all Taxes required by applicable law; and (iii) has deposited with Beneficiary sufficient funds in an amount determined in Beneficiary's reasonable judgment to pay in full such contested Taxes and all penalties and interest that might become due thereon.

5.2 TAXES DURING AN EVENT OF DEFAULT. Following an Event of Default (as defined below), Beneficiary may require Trustor to escrow funds for the payment of Taxes (the "Tax Escrow"). If Beneficiary elects to require a Tax Escrow, Trustor shall (i) deposit funds in such amounts deemed necessary by Beneficiary to fully fund the Tax Escrow for the payment of up to twelve (12) months of future Taxes upon the Property; and (ii) on the 1st day of each month during the occurrence and continuation of any Event of Default, an amount equal to 1/12 of the annual Taxes upon the Property. All contributions from Trustor towards the Tax Escrow shall be based upon the most recent tax bill for the Property and shall be made by direct deposit, electronic transfer, or by any other method required by Beneficiary. Beneficiary shall pay, when due, all Taxes from the Tax Escrow in such order and priority as determined in Beneficiary's sole and absolute discretion. In the event of a deficiency in the Tax Escrow, (i) Trustor shall immediately remit such delinquent amounts to Beneficiary; and (ii) Beneficiary may elect to advance funds to pay the Taxes which shall become part of the Indebtedness and be immediately payable from Trustor to Beneficiary. When the Indebtedness has been fully paid, any remaining funds in the Tax Escrow shall be refunded to Trustor. Further, if at any time during the Loan, Trustor fails to pay Taxes upon the Property, Beneficiary may pay such Taxes, the costs and expenses of which shall become part of the Indebtedness and Trustor shall immediately reimburse Beneficiary for same. The Tax Escrow shall be held by Beneficiary in a non-interest-bearing account. In the event of a sale of the Property by Trustee, the Tax Escrow shall become property of Beneficiary, who shall apply such funds in such order and priority as determined in Beneficiary's sole and absolute discretion.

5.3 TAX LAWS. Trustor shall be responsible for the payment of any Taxes payable in connection with the execution and recording of this Deed. If any Taxes are imposed or become due upon the filing of this Deed, the execution of the Note or any other action taken with respect to the Loan Documents under the laws of the United States of America, or of any other state, county or municipality having jurisdiction over Beneficiary, Trustor or the Property, then Trustor shall immediately pay such tax in the manner required by such law. Trustor is a non-foreign entity under Section 1445 of the Internal Revenue Code of 1986, as amended, and no withholding tax is required in connection with the recording of this Deed.

ARTICLE VI  
CONDEMNATION AND EMINENT DOMAIN

6.1 CONDEMNATION AND EMINENT DOMAIN. In the event the Property or any part thereof is condemned or taken for public use under powers of eminent domain (collectively, a "Taking"), then Beneficiary shall have the right to demand and immediately receive all funds, awards and amounts awarded for the appropriation or damage thereof, which shall be applied in any order or priority determined in Beneficiary's sole and absolute discretion, including, but not limited to, application towards the Indebtedness. Trustor shall give Beneficiary immediate notice of any actual or threatened commencement of any such proceedings related to a Taking and further agrees to execute and deliver to Beneficiary all further assignments and/or instruments deemed necessary by Beneficiary for the purpose of assigning all funds, awards and other compensation under such proceedings. Beneficiary shall be authorized and empowered to settle and adjust any awards, payment or other compensation relating to a Taking of the Property, and the Expenditures of Beneficiary in connection therewith shall add to and become part of the Indebtedness and shall be reimbursed to Beneficiary upon demand.

ARTICLE VII  
TRANSFER OF PROPERTY

7.1 DUE ON SALES CLAUSE. Except as set forth in this Deed, Trustor shall not sell, convey or otherwise transfer any ownership interests or right in any part or all of the Property, whether voluntary or involuntary, without first fully paying and satisfying the Indebtedness (collectively, a "Prohibited Transfer"). If the Trustor is an entity, a Prohibited Transfer shall expressly include the transfer, sale or conveyance of any ownership interests (whether membership interests, partnership interest, stock or otherwise) of Trustor without the express written consent of Beneficiary. Any Prohibited Transfer shall be an Event of Default (as defined below) and the Indebtedness shall be accelerated and immediately due and payable without prior demand or notice.

ARTICLE VIII  
SECURITY AGREEMENT

8.1 SECURITY AGREEMENT. Trustor hereby grants Beneficiary a continuing security interest in all Fixtures located on or attached to the Property, whether now owned or hereafter acquired. This Deed shall constitute a security agreement under the Utah Uniform Commercial Code (the "UCC"), and a security interest in the Fixtures are hereby granted from Trustor, as

debtor, to Beneficiary, as secured party, to secure payment of the Indebtedness. Trustor covenants and agrees that (i) Trustor, as debtor, will remain the true and lawful owner of the Fixtures, free and clear of any liens or encumbrances except for the Permitted Exceptions; (ii) Trustor shall immediately execute such further documentation required by Beneficiary to evidence and perfect Beneficiary's security interest in the Fixtures; (iii) Beneficiary shall have all rights and remedies of a secured party under the UCC, including, but not limited to, the right to take immediate and exclusive possession of the Property and file UCC financing statements evidencing Beneficiary's lien and security interest in the Fixtures; and (iv) following an Event of Default, Beneficiary shall have the right to hold, maintain, preserve, sell or otherwise dispose of the Fixtures by public or private sale, the proceeds of which shall be applied in such order or manner as Beneficiary shall select, including, but not limited to, applying such funds to the Indebtedness. This Deed is intended to be a financing statement as set forth in the Utah UCC with respect to the Fixtures.

*ARTICLE IX*  
EVENT OF DEFAULT

9.1 EVENT OF DEFAULT. An event of default (an "Event of Default") shall be deemed to have occurred hereunder upon any of the following: (i) the occurrence of any event or condition which constitutes a default under the terms of the Note or the Loan Documents; (ii) any representation or warranty made or furnished to Beneficiary by or on behalf of Trustor under this Deed is false or misleading in any material respect; or (iii) the failure or violation of Trustor to keep, perform, observe, or comply with any covenant, agreement, term, or condition required of this Deed.

Upon the occurrence of an Event of Default under this Deed, Beneficiary shall (i) give written notice to Trustor of a monetary default, and Trustor shall have a period of 10 days thereafter to cure such monetary Event of Default; and (ii) give written notice to Trustor of a non-monetary default and Trustor shall have a period of 30 days thereafter to cure such non-monetary Event of Default. Beneficiary shall have no obligation to provide more than three (3) written default notices to the Trustor within any given calendar year. Notwithstanding any other provision of this Deed, if any provision of applicable law requires that Trustor be granted a longer notice period or a greater opportunity to cure, that provision of law shall control; provided, however, that the applicable notice period set forth herein shall run concurrently with the notice period required by law.

*ARTICLE X*  
REMEDIES ON EVENT OF DEFAULT

10.1 ACCELERATE INDEBTEDNESS. Upon the occurrence of an Event of Default, Beneficiary may declare the Indebtedness to be immediately due and payable without presentment, protest or further demand or notice of any kind, all of which are hereby expressly waived by Trustor.

10.2. SALE OF PROPERTY. Trustee shall sell the Property to satisfy Beneficiary's security interest in the Property following an Event of Default. Trustee, in its sole and absolute discretion, may accept any form of consideration in exchange for the Property, and Beneficiary may purchase all or any part of the Property at public or, if permitted by law, private sale. Prior to any sale of the Property, Trustee will provide Trustor prior notice prior to such proposed action and record

and publish notice thereof in accordance with Utah law, which shall constitute fair and reasonable notice. Proceeds from any disposition or sale of the Property shall be applied in such order as Trustee may determine against the following: (i) towards the Expenditures; (ii) towards the expenses of satisfying any liens, security interest or encumbrances on or upon the Property which may be prior to the lien or security interest of Beneficiary; and (iii) to the Indebtedness owed to Beneficiary.

**10.3 RIGHT OF POSSESSION.** If the Indebtedness becomes due and payable following an Event of Default, by acceleration or otherwise, Beneficiary and/or Trustee may, at its option, take actual possession of the Property. Trustor shall immediately surrender the Property upon three (3) days written demand, and Beneficiary and/or Trustee shall be authorized to (i) hold, operate, manage, and control all or any part of the Property; (ii) cancel or terminate any Lease or sublease of all or any part of the Property; (iii) elect, extend, modify, disaffirm and make new Leases of all or any part of the Property, which extensions, modifications, cancellations and new Leases may provide for terms to expire, or for options to which may extend beyond the maturity date of the Loan, it being understood and agreed that such actions shall be binding upon Trustor and subordinate to this Deed; (iv) make all necessary or proper repairs, replacements, alterations, additions, and improvements in connection with the Property as deemed reasonably necessary by Beneficiary and/or Trustee, the costs of which shall become part of the Indebtedness; (v) insure the Property against all risks incidental to the possession, operation, and management thereof of the property, the costs of which shall become part of the Indebtedness; (vi) receive all Rents, issues, deposits, profits and revenues related to the Property and apply the same against the Indebtedness in such order determined in the sole and absolute discretion of Beneficiary and/or Trustee; and (vii) perform any act herein in the form and manner deemed necessary by Beneficiary and/or Trustee.

**10.4 RECEIVER.** If the Indebtedness becomes due and payable following an Event of Default, by acceleration or otherwise, Trustee and/or Beneficiary may, at its sole and absolute option, request that the court appoint a receiver of the Property (the "Receiver"), who shall preserve, protect, maintain, operate, improve, manage and control the Property. Such appointment may be made either before or after a sale of the Property and Beneficiary and its affiliates, employees and agents shall not be disqualified as a Receiver and may be appointed as such without restriction. The Receiver shall have the power to collect Rents derived from the Property and may apply them against the Indebtedness in such order and priority as determined in the sole and absolute discretion of Beneficiary.

**10.5 WAIVER OF TRUSTOR RIGHTS.** To the full extent permitted by Utah law, in connection with any proceeding under this Deed, including, without limitation, any action by Beneficiary and/or Trustee in the sale, repossession or other court process, Trustor covenants and agrees that it will not at any time assert, plead or claim or take any advantage of, and hereby waives, any stay, right, exemption or extension law now or at any time hereafter in force, including, not limited to, (i) right or claims to valuation or appraisement of the Property, or any part thereof, prior to any sale contemplated by this Deed; (ii) any and all rights of redemption from a sale of the Property; (iii) all benefits under any present or future laws exempting the Property, or any part of any proceeds thereof from attachment, levy or sale under execution; (iv) presentment for payment, demand, notice of demand, notice of non-payment, and protest of the Note or the Loan Documents; (v) any demand for possession of Property prior to commencement of any suit; (vi) any and all

marshalling laws; and (vii) all rights to claim or recover attorney's fees and costs if Trustor is successful in any action to remove, suspend or prevent the enforcement of a judgment, including those entered by confession. Further, if the Note or any of the Loan Documents are modified, extended or changed in any manner, Trustor agrees and acknowledges that such action shall not affect the validity of this Deed which shall continue in full force and effect. It is the intent of the Trustor and Beneficiary that all rights of Trustor are and deemed to be waived to the full extent permitted by applicable law.

10.6 WAIVER OF HOMESTEAD RIGHTS. Trustor hereby releases and waives all homestead rights under Utah law.

10.7 REMEDIES NOT EXCLUSIVE. The rights, remedies, powers and privileges provided to Beneficiary in this Deed shall not be deemed exclusive but shall be cumulative and shall be in addition to all other rights, remedies, powers and privileges in Beneficiary's favor at law or in equity in this Deed, the Note and the Loan Documents. Neither the failure nor delay on the part of Beneficiary and/or Trustee to exercise any right, remedy, power or privilege under this Deed upon the occurrence of any Event of Default, or otherwise, shall operate as a waiver thereof or impair any such right, remedy, power or privilege of Beneficiary and/or Trustee. No single, partial or full exercise of any rights, remedies, powers and privileges by the Beneficiary and/or Trustee shall preclude further or other exercise thereof. No course of dealing between Beneficiary and Trustor shall operate as or be deemed to constitute a waiver of Beneficiary's rights under this Deed or affect the duties or obligations of Trustor hereunder. Further, Trustor waives any rights or defenses relating to laws requiring Trustor to exercise or exhaust rights or remedies against any other entity or person or collateral securing the Loan prior to enforcing Beneficiary's rights under this Deed.

#### ARTICLE XI ASSIGNMENT OF LEASES AND RENTS

11.1 ASSIGNMENT OF LEASES AND RENTS. Trustor hereby absolutely and presently assigns and transfers to Beneficiary all of Trustor's right, title and interest in and to the Leases and Rents, along with all awards and payments of any kind derived from or relating to the Leases and Rents, including, without limitation (i) proceeds of any insurance policy upon or relating to the Leases; (ii) claims for damages under the Leases, including, but not limited to, lump sum payments for the cancellation or termination of the Leases; and (iii) the proceeds of any rental insurance carried by Trustor on the Property. This Deed is intended to be and shall constitute an unconditional, absolute and present assignment from Trustor to Beneficiary of all of Trustor's right, title and interest in and to the Leases and Rents, and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default exists under this Deed, Trustor shall have the privilege under a revocable license to collect Rents from the Property as they become due, but not prior to accrual, and to receive and hold the same. Trustor shall receive and hold such Rents in trust to be applied to the payment of the Taxes, the Premiums and the Indebtedness. Notwithstanding the automatic applicability of this Deed to all future Leases, Trustor agrees to formally assign all future Leases to Beneficiary. Upon the occurrence of any Event of Default, Beneficiary may collect the Rents and any other sums due under the Leases and apply the same in such order and priority as Beneficiary in its sole discretion may elect.

11.2 COVENANTS AND AGREEMENTS REGARDING LEASES AND RENTS. Trustor covenants and agrees that from the date of this Deed and until final payment of all of the Indebtedness, Trustor will: (i) perform all of the obligations imposed upon Trustor under the Leases; (ii) not collect any of the Rents in advance of the time when the same become due; (iii) not discount any future accruing Rents; (iv) not execute any other assignment of Leases or Rents; (v) not change the terms of or terminate the Leases; (vi) not subordinate the Leases to any deed or other encumbrance except in favor of Beneficiary; (vii) not consent to any assignment of or subletting under the Leases; and (viii) not enter into any Leases subsequent to the date of this Deed without the prior written consent of Beneficiary. Any attempted amendment, cancellation or other modification of the Leases without the prior written consent of Beneficiary shall be null and void. Trustor further covenants and agrees to furnish to Beneficiary, on demand, certified true copies and/or originals of all existing Leases and any subsequent Leases, and any modifications or amendments thereto. Beneficiary shall not be obligated or liable by reason of this Deed to perform any obligation of Trustor under any of the Leases, and Beneficiary shall not, prior to entry upon and taking physical possession of the Property, be deemed a creditor in possession. This Deed shall not operate to place responsibility upon Beneficiary for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases. Beneficiary assumes no liability for any security deposit or rent prepaid under Leases to Trustor, unless and until such deposits or prepaid rents are delivered to Beneficiary.

11.3 FURTHER DOCUMENTATION. Trustor shall promptly deliver to Beneficiary (i) tenant subordination agreements; (ii) subordination, non-disturbance, and attornment agreements; (iii) estoppel letters; and (iv) any other such documents requested by Beneficiary. All documentation requested by Beneficiary hereunder shall be provided by Trustor within ten (10) days of such request and shall include such statements and certifications deemed necessary or desirable in Beneficiary's sole and absolute discretion, including, but not limited to: (i) that the Leases are unmodified and in full force and effect; (ii) the amount of Rents (including a breakdown thereof) payable under the Leases and the dates to which the Rents and other charges under the Leases have been paid in advance; (iii) the termination dates of all Leases, including any and all extensions or renewal options; and (iv) whether there are any uncured defaults by Trustor or tenant or any setoffs or defenses against enforcement of any terms or conditions under any Leases.

## ARTICLE XII HAZARDOUS SUBSTANCES

12.1 HAZARDOUS SUBSTANCES. Trustor shall comply with all Environmental Laws (as defined below) and ensure that the Property remains free of Hazardous Substances (as defined below). Except as disclosed and consented to by Beneficiary in writing, (i) there has been no use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance by, on, under, about or from the Property in violation of applicable Environmental Laws; and (ii) there is no threatened or pending claim, action, investigation, or proceeding seeking to enforce any right or remedy against Trustor or the Property under any Environmental Laws. As used in this Deed, "Hazardous Substances" shall mean (i) any "Hazardous Waste," as defined by the Resource Conservation and Recovery Act of 1976, as amended; (ii) any "Hazardous Substance" as defined under Utah law, as amended; (iii) any "Hazardous Substance" as defined by the Comprehensive Environmental Response,

Compensation and Liability Act of 1989, as amended; (iv) any material or substance, the presence of which is prohibited by any federal, state or local law, statute, ordinance or regulation, or court administrative order or decree, or requires special handling in collection, storage, treatment or disposal; and (v) any other materials that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise handled. The term "Environmental Laws" shall mean (i) all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health or the environment; (ii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), as amended; (iii) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), as amended; (iv) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; (v) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended; and (vi) other applicable federal or state laws, rules, or regulations adopted pursuant thereto.

**12.2 REPRESENTATIONS AND WARRANTIES REGARDING HAZARDOUS SUBSTANCES.** Trustor represents and warrants that (i) there has been no use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance by, on, under, about or from the Property in violation of applicable Environmental Laws; (ii) there is no threatened or pending claim, action, investigation, or proceeding seeking to enforce any right or remedy against Trustor or the Property under any Environmental Laws. Trustor has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of Hazardous Substances and none of the operations of Trustor or any tenant occupying the Property are the subject of federal or state litigation or proceedings, or of any investigation evaluating whether any remedial action involving a material expenditure is needed to respond to any improper treatment, storage, recycling, disposal or release into the environment of any Hazardous Substance. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the use of the Property, including, without limitation, past or present treatment, storage, disposal or release of a Hazardous Substance or solid waste into the environment, have been duly obtained or filed. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances based upon Environmental Laws.

**12.3 COVENANTS AND AGREEMENTS REGARDING HAZARDOUS SUBSTANCES.** Trustor will take and continue to take prompt action to remedy all environmental pollution and contamination, Hazardous Waste disposal and other environmental clean-up problems related to the Property. Trustor shall, at its sole cost and expense, conduct and complete all investigations, sampling, and testing required by Beneficiary and all remedial, removal, and other actions necessary to clean up and remove all such Hazardous Substances on, under, about, or affecting the Property in compliance with all applicable Environmental Laws. Trustor shall give Beneficiary prompt written and oral notice if Trustor receives any notice regarding Hazardous Substances on, under, about, or affecting the Property. Trustor will indemnify and hold Beneficiary, its officers, directors, employees, representatives, agents, and affiliates harmless against, and promptly pay on demand or reimburse each of them with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses of any and every kind or nature whatsoever asserted against or incurred by any of them by reason of or arising out of or in any way related to (i) the

breach of any representation or warranty as set forth herein regarding Environmental Laws, or (ii) the failure of Trustor to perform any obligation herein required to be performed pursuant to Environmental Laws. The provisions of this Section 12.3 shall survive the final payment of the Loan and the sale of the Property and shall continue thereafter in full force and effect. Notwithstanding anything contained in this Deed to the contrary, any covenants and agreements of Trustor concerning Hazardous Substances and Environmental Laws addressed herein shall not be applicable to any condition which is first created or introduced after a foreclosure, conveyance or other transfer of title of the Property. Medical service providers occupying the Property may use, store, and dispose of Hazardous Substances only if such use, storage, and disposal is (i) undertaken in the ordinary course of their respective medical practices, and (ii) performed in strict conformity with applicable Environmental Laws.

**12.4 REMOVAL OF HAZARDOUS SUBSTANCES BY BENEFICIARY.** Beneficiary may, in its sole and absolute discretion, elect to remedy all environmental pollution and contamination, Hazardous Waste disposal and other environmental clean-up problems related to the Property. Trustor shall reimburse Beneficiary within five (5) days of Beneficiary's demand for payment of all clean up and removal costs and expenses related thereto, including but not limited to any fines and penalties. All sums expended by Beneficiary in connection with any remedial or clean up action related to the Property shall become part of the Indebtedness.

*ARTICLE XIII*  
ADDITIONAL TERMS AND CONDITIONS

**13.1 AMENDMENTS AND APPROVALS.** No amendment, modification, or any other change to the provisions of this Deed shall be effective unless in writing and signed by Beneficiary and Trustor.

**13.2 FINANCIAL STATEMENTS.** Trustor shall, upon three (3) days written request from Beneficiary, furnish to Beneficiary such certified tax statements, operating statements and other reports or documentation related to the operation, use or ownership Property as reasonably requested by Beneficiary.

**13.3 NOTICES.** All notices, elections or demands permitted or required to be given under this Deed shall be in writing, signed by or on behalf of the party giving such notice, election or demand, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt required, and shall be deemed to have been received on the earlier of the date shown on the receipt or three (3) business days after the postmarked date thereof, to the other party at the address of such other party set forth below or such other address within the continental United States as such other party may designate by specifically designating as a notice of change of address and given in accordance herewith. No notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a partner or any officer, partnership, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

If given to Beneficiary:

LIVE OAK BANKING COMPANY  
1741 Tiburon Drive  
Wilmington, North Carolina 28403

Copy (does not constitute notice) to:

Davis, Pickren, Seydel & Sneed, LLP  
285 Peachtree Center Avenue  
2300 Marquis Two Tower  
Atlanta, Georgia 30303  
Attn: William Terry Pickren

If given to Trustor:

JONATHAN A. DONIGAN  
1539 Misty Breeze Circle  
Kaysville, Utah 84037

If given to Trustee:

OLD REPUBLIC NATIONAL TITLE  
INSURANCE COMPANY  
365 West 1550 North, Suite A  
Layton, Utah 84041

13.4 GOVERNING LAW. This Deed shall be governed by and construed in accordance with the laws of the State of North Carolina, except and only to the extent of procedural matters related to the perfection and enforcement of Beneficiary's rights and remedies against the Property, which matters shall be governed by the laws of DAVIS County, Utah. However, if the enforceability or validity of any provision of this Deed is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. If any provision of applicable law requires that Trustor be granted a longer notice period or a greater opportunity to cure and Event of Default, that provision of law shall control.

13.5 SEVERABILITY. In the event that any clause or provisions of this Deed is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect the validity, legality or enforceability any of the remaining portions or provisions of this Deed. If feasible, the offending provision shall be considered modified so that it becomes legal, valid, and enforceable, and if the offending provision cannot be so modified, it shall be considered deleted from this Deed.

13.6 NO ASSIGNMENT BY TRUSTOR. Neither this Deed nor any of Trustor's rights under this Deed shall be assignable by Trustor without the express prior written consent of Beneficiary in its sole and absolute discretion.

13.7 COUNTERPARTS. This Deed may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

13.8 INTERPRETATION. This Deed is the result of negotiations between Trustor and Beneficiary and their respective counsel. This Deed shall not be applied, interpreted, or construed more strictly against a party because that party or their counsel drafted this Deed.

13.9 SUBROGATION. If any part of the Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Property, then Beneficiary shall be subrogated and made senior to the rights of the holder thereof.

13.10 LIMITATION OF BENEFICIARY'S RESPONSIBILITY. Each survey, inspection, appraisal or other report requested or required by Beneficiary under this Deed or in connection with the Loan shall be solely for Beneficiary's own use and protection and not for the benefit or the protection of Trustor or any other person or entity. Trustor acknowledges and agrees that Beneficiary makes no warranty or representation as to the accuracy, completeness, or sufficiency of any such survey, inspection, appraisal or other report and neither Trustor nor any other person or entity may rely upon any such survey, inspection, appraisal or other report.

13.11 DEFINED TERMS. Capitalized words and terms have the meanings given to them in this Deed. All references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and words and terms used in the plural shall include the singular, as the context may require. The captions and headings of this Deed are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions of this Deed.

13.12 SURVIVAL. All covenants, agreements, representations and warranties made by Trustor herein shall survive the execution and delivery of this Deed.

13.13 SUCCESSORS AND ASSIGNS. All representations, warranties, covenants, and agreements by or on behalf of Trustor contained in this Deed shall (i) bind Trustor's successors and assigns (including every subsequent record owner of the Property); (ii) shall inure to the benefit of Beneficiary and its successors and assigns; and (iii) shall run with the Land and be binding on any successor owners of the Land so long as the Indebtedness remains outstanding.

13.14 INDEMNIFICATION OF BENEFICIARY. Trustor agrees to indemnify, defend, and hold Beneficiary and its officers, directors, employees, and agents harmless from and against any and all claims, suits, obligations, damages, losses, costs, expenses (including, without limitation, reasonable attorneys' fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever and whenever made that may be asserted against or incurred by Beneficiary or its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by: (i) this Deed and the Loan Documents; (ii) a breach by Trustor of this Deed or the Loan Documents; (iii) the exercise of the rights and remedies granted to Beneficiary under this Deed and the Loan Documents; and (iv) the use, generation, manufacture, storage, disposal, release, or threatened release of a Hazardous Substance on, under, about, or from the Property. Trustor releases and waives any future claims against Beneficiary and its officers, directors, employees, and agents for indemnity or contribution in the event Beneficiary becomes liable for cleanup or other costs under any Environmental Law for the use, generation, manufacture, storage, disposal, release, or threatened release of a Hazardous Substance on, under, about, or from the Property. The provisions of Section 13.14 shall survive the payment of the Note and the expiration, cancellation, or termination of this Deed, and shall not be affected by Beneficiary's acquisition of any interest in any of the Property, whether by foreclosure or otherwise, and shall not apply against Beneficiary's own gross negligence or willful misconduct, in which case Beneficiary's liability

shall be limited to only direct damages suffered and shall not extend to consequential or incidental damages.

**13.15 ATTORNEY'S FEES.** In connection with any legal action or other proceeding, whether at law or in equity, arising out of this Deed or otherwise relating to the Property, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses in addition to any other relief to which such party or parties may be entitled.

**13.16 FURTHER ASSURANCES.** Upon written request from Beneficiary, Trustor shall execute and deliver to Beneficiary such documents, agreements, instruments and certificates reasonably required in Beneficiary's to confirm and evidence Beneficiary's lien upon the Property and rights set forth in this Deed.

**13.17 SBA STIPULATIONS.** The Loan secured by this Deed was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- (a) When SBA is the holder of the Note, this Deed and all documents evidencing or securing the Loan will be construed in accordance with federal law.
- (b) Beneficiary or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Trustor may claim or assert against SBA any local or state law to deny any obligation of Trustor or defeat any claim of SBA with respect to this Loan.
- (c) Any clause in this Deed requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

*{Signatures commence on following page}*

Trustor has executed and delivered this Deed as of December 13<sup>th</sup>, 2023.

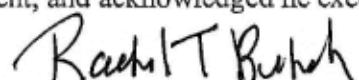
TRUSTOR:

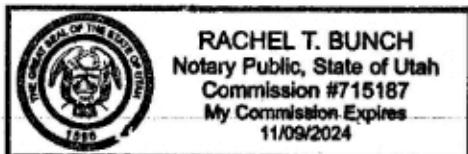
  
\_\_\_\_\_  
JONATHAN A. DONIGAN

STATE OF Utah  
COUNTY OF DAVIS

On December 13<sup>th</sup>, 2023, before me, Rachel T Bunch a notary public, personally appeared JONATHAN A. DONIGAN, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Signature  
Print Name: Rachel T Bunch



**EXHIBIT "A"**

1539 Misty Breeze Circle, Kaysville, Utah 84037

All of Lot 38, MOUNTAIN VISTAS PHASE 1B CLUSTER SUBDIVISION, Kaysville City, Davis County, Utah, according to the official plat thereof, on file and of record in the Davis County Recorder's Office.

**EXHIBIT "B"**  
**PERMITTED EXCEPTIONS**  
1539 Misty Breeze Circle, Kaysville, Utah 84037

1. Taxes for the year 2023 and subsequent years not yet due and payable.
2. Covenants, Conditions and/or Restrictions, Easements, Assessments, Liens, Charges, Terms and Provisions contained within those certain Declarations and any amendments thereto, recorded August 23, 2001 as Entry No. 1684109 in Book 2872, Page 483 of the Official Records of Davis County, Utah.
3. Amended Covenants, Conditions, Restrictions and/or Easements recorded April 11, 2008 as Entry No. 2356278 in Book 4510 at Page 469 of the Official Records of Davis County, Utah.
4. Amended Covenants, Conditions, Restrictions and/or Easements recorded May 5, 2021 as Entry No. 3378954 in Book 7753 at Page 5 of the Official Records of Davis County, Utah.
5. Amended Covenants, Conditions, Restrictions and/or Easements recorded March 7, 2023 as Entry No. 3520124 in Book 8207 at Page 736 of the Official Records of Davis County, Utah.
6. Notice of Reinvestment Fee Covenants, the terms, conditions, and limitations contained therein, recorded May 28, 2010 as Entry No. 2531397 in Book 5035, Page 1620 of the Official Records of Davis County, Utah.
7. Deed of Trust dated January 5, 2022 from Jonathan A. Donigan to American Secure Title as Trustee for MERS, Inc., solely as nominee for Intercap Lending, Inc. in the amount of \$444,450.00, recorded January 10, 2022 as Entry No. 3448467 in Book 7922, Page 396 of the Official Records of Davis County, Utah.