

ENT 59250:2025 PG 1 of 7  
**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
2025 Aug 07 01:30 PM FEE 40.00 BY TM  
RECORDED FOR Cottonwood Title Insurance  
ELECTRONICALLY RECORDED

**Tax Serial Number:**  
**29-023-0051**

**RECORDATION REQUESTED BY:**  
M&T Bank  
Utah Region  
75 W Towne Ridge Parkway, Suite 150  
Sandy, UT 84070

**WHEN RECORDED MAIL TO:**  
M&T Bank  
Utah Region  
75 W Towne Ridge Parkway, Suite 150  
Sandy, UT 84070

191020-DMP

FOR RECORDER'S USE ONLY

#### **HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT**

THIS HAZARDOUS SUBSTANCES AGREEMENT dated July 30, 2025, is made and executed among and M&T Bank, Utah Region, 75 W Towne Ridge Parkway, Suite 150, Sandy, UT 84070 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

**PROPERTY DESCRIPTION.** The word "Property" as used in this Agreement means the following Real Property located in Utah County, State of Utah:

PROPOSED HIATT CREEK PHASE 1, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED SOUTH 89°41'05" WEST ALONG THE SECTION LINE 14.50 FEET FROM THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 312.76 FEET; THENCE WEST 844.82 FEET; THENCE NORTH 21.17 FEET; THENCE NORTH 27°53'27" EAST 75.16 FEET; THENCE NORTH 06°51'22" EAST 90.60 FEET; THENCE NORTH 27°52'47" EAST 30.74 FEET; THENCE NORTH 00°09'01" WEST 57.49 FEET; THENCE NORTH 70°27'34" EAST 59.06 FEET; THENCE NORTH 00°10'49" WEST 26.78 FEET TO THE SECTION LINE; THENCE NORTH 89°41'05" EAST ALONG THE SECTION LINE 729.06 FEET TO THE POINT OF BEGINNING.

The Real Property or its address is commonly known as Approximately 2060 West 1150 South, Payson, UT 84652. The Real Property tax identification number is 29-023-0051.

**AFFIRMATIVE COVENANTS.** Indemnitor covenants with Lender as follows:

**Notices.** Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

- (1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.
- (2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the

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Property or the operations conducted on the Property.

- (3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.
- (4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.
- (5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

**Access to Records.** Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

**PAYMENT: FULL RE COURSE TO INDEMNITOR.** Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice.

**SURVIVAL.** The covenants contained in this Agreement shall survive (A) the repayment of the Indebtedness, (B) any foreclosure, whether judicial or nonjudicial, of the Property, and (C) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the Indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

**ADDENDUM TO THE HAZARDOUS SUBSTANCE AGREEMENT.** An exhibit, titled "Addendum to the Hazardous Substance Agreement," is attached to this Agreement and by this reference is made a part of this Agreement just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Agreement.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Arbitration.** Indemnitor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief

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from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Utah.

**Choice of Venue.** If there is a lawsuit, Indemnitor agrees upon Lender's request to submit to the jurisdiction of the courts of Salt Lake County, State of Utah.

**Joint and Several Liability.** All obligations of Indemnitor under this Agreement shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor. This means that each Indemnitor signing below is responsible for all obligations in this Agreement.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

**Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Agreement or required by law shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Agreement, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided by applicable law, if there is more than one Indemnitor, any notice given by Lender to any Indemnitor is deemed to be notice given to all Indemnitors.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered

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deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Indemnitor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Indemnitor, Lender, without notice to Indemnitor, may deal with Indemnitor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Indemnitor from the obligations of this Agreement or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, 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 the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

**Borrower.** The word "Borrower" means WHL Hiatt LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Hazardous Substances.** The words "Hazardous Substances" mean 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 words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Indemnitor's obligations or expenses incurred by Lender to enforce Indemnitor's obligations under this Agreement, together with interest on such amounts as provided in this Agreement.

**Lender.** The word "Lender" means M&T Bank, its successors and assigns.

**Note.** The word "Note" means the Note dated July 30, 2025 and executed by WHL Hiatt LLC in the principal amount of \$3,450,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Property.** The word "Property" means all of Indemnitor's right, title and interest in and to all the Property as described in the "Property Description" section of this Agreement.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

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**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED JULY 30, 2025.**

LENDER:

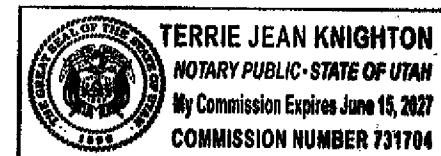
M&amp;T BANK

x Daneen Jensen  
 Authorized Signer

## LENDER ACKNOWLEDGMENT

STATE OF Utah

)

COUNTY OF Salt Lake) SS  
)

On this 30<sup>th</sup> day of July, 20 25, before me, the undersigned Notary Public, personally appeared Daneen Jensen and known to me to be the Daneen Jensen authorized agent for **M&T Bank** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **M&T Bank**, duly authorized by **M&T Bank** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **M&T Bank**.

By Terrie Jean Knighton  
 Notary Public in and for the State of Utah

Residing at Salt Lake  
 My commission expires 06/15/27

## ADDENDUM TO THE HAZARDOUS SUBSTANCE AGREEMENT

This **ADDENDUM TO THE HAZARDOUS SUBSTANCE AGREEMENT** is attached to and by this reference is made a part of the Hazardous Substances Agreement, dated July 30, 2025, and executed in connection with a loan or other financial accommodations between M&T BANK and WHL Hiatt LLC.

This Addendum, as may be amended from time to time, is a part of and shall be incorporated into the certain Hazardous Substance Agreement referenced above, executed and delivered by Borrower to M&T Bank ("Lender") on or about the date indicated above, and any replacements, amendments, modifications and extensions thereof (collectively, the "Agreement"). Each capitalized term used herein shall have the meaning specified in the Agreement, except as otherwise defined herein.

This Addendum shall set forth certain additional terms and conditions with respect to the Agreement. To the extent that the terms of this Addendum shall differ from the terms of the Agreement, the terms of this Addendum shall control.

**No Transfer of Assets.** Indemnitor shall not transfer, reinvest or otherwise dispose of his or her or its assets, by operation of law or otherwise, in a manner or to an extent that would or might impair Indemnitor's ability to perform his or her obligations under this Agreement, including, without limitation, by division of Indemnitor into (or of) one or more entities or series of entities or allocation or transfer of any of Indemnitor's assets or liabilities as a result of such a division; Indemnitor shall remain liable to Lender despite any such division, allocation, transfer, reinvestment or disposition.

**Further Assurances.** Indemnitor shall, and shall cause its affiliates to take such action and execute and deliver to the Lender such additional documents, instruments, certificates, and agreements as the Lender may reasonably request from time to time to effectuate the purposes and intent of the transaction(s) contemplated hereby, including, without limitation, causing any affiliate, entity or series of entities it may create hereafter through merger, division or otherwise, to execute agreements, in form and substance acceptable to Lender, (i) assuming or guarantying the Indemnitor's obligations under this Agreement and any Related Documents and (ii) pledging assets to the Lender to the same extent as the Indemnitor.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect amounts owed related to this Agreement and agreements related to this Agreement if Indemnitor does not pay or otherwise is in default of its obligations. Indemnitor will pay on demand all of Lender's fees and expenses incurred in efforts to collect amounts owed under this Agreement or to otherwise protect its interests or enforce its rights and remedies. These fees and expenses include, subject to any limits under applicable law, Lender's attorney's fees and fees paid to any advisor or consultant, and all related costs and expenses, including, without limitation, costs of pre- and post-judgment collection services, searching records, obtaining title reports (including foreclosure reports), surveyor's reports, and appraisals and title insurance, whether or not there is a lawsuit, and include, without limitation, all fees and expenses incurred related to any bankruptcy proceeding (including efforts to modify, vacate or obtain other relief from any automatic stay or injunction) and all appeals, and any post-judgment collection proceedings and efforts. If not prohibited by applicable law, Indemnitor will also pay any court costs and such additional fees and costs as may be directed by the court, in addition to other sums provided by law.

**Definitions.** The term "Agreement", as defined in the Agreement, is hereby amended to include this Addendum.

## **ADDENDUM TO THE HAZARDOUS SUBSTANCE AGREEMENT**

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**ANSWER 3**  
**(Continued)**

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THIS ADDENDUM TO THE HAZARDOUS SUBSTANCE AGREEMENT IS EXECUTED ON JULY 30, 2025.

**LENDER:**

M&T BANK

Daneen Jones  
Authorized Signer

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