

Recording Requested and  
When Recorded Return to:  
Andrew D. Hahs  
Bittner & Hahs, P.C.  
4949 SW Meadows Road, Suite 260  
Lake Oswego, OR 97035

ORT File 2158787HM

**14053217 B: 11391 P: 860 Total Pages: 25**  
**12/15/2022 12:44 PM By: tpham Fees: \$40.00**  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: OLD REPUBLIC TITLE (COMMERCIAL)  
299 S MAIN ST SALT LAKE CITY, UT 841111919

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

Trustor: Decker Lake QOZB, LLC, a Utah limited liability company

Beneficiary: M&T Bank, a New York banking corporation, its successors and/or assigns

Trustee: Old Republic National Title Insurance Company

Legal Description: See Exhibit A

Tax Parcel Number(s): 15-27-101-027 and 15-27-101-028 (prior Tax ID numbers)  
New Tax ID: 15-27-101-029

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made this 15 day of December, 2022, by Decker Lake QOZB, LLC, a limited liability company organized under the laws of the State of Utah, whose address is 14034 S. 145 East, Suite 204, Draper, Utah 84020 ("Trustor"); Old Republic National Title Insurance Company as trustee ("Trustee"), whose address is 299 South Main Street, Suite 120, Salt Lake City, Utah 84111; and M&T Bank, a New York banking corporation, its successors and/or assigns ("Beneficiary"), whose address is One M&T Plaza, Buffalo, New York 14203-2399.

Beneficiary is making a loan (the "Loan") to Trustor in the maximum principal amount of Fifty-Six Million Eight Hundred Seventy-Nine Thousand and No/100 Dollars (\$56,879,000.00) to be secured by that certain real property (the "Realty") described in the attached Exhibit A. Beneficiary is making the Loan to allow Trustor to construct improvements on the Realty. THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION MORTGAGE AS DEFINED IN UTAH CODE 70A-9a.334(8). The Loan is due and payable in full on January 1, 2026, exclusive of one (1) twelve (12)-month option to extend, as described in the Note (defined below). If Trustor exercises the extension option, the Maturity Date will be extended to January 1, 2027. The interest rate, payment terms, and balance due with respect to the Loan may be indexed, adjusted, renewed, or renegotiated in accordance with the terms of the Note and/or on account of any extensions or renewals of the Note.

In consideration of the Loan, Trustor hereby irrevocably GRANTS, TRANSFERS, CONVEYS, and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Trustor's present and future estate, rights, title, claim, interest, and demand, either in law or in equity, of, in, and to the following property (the "Property"):

- (a) The Realty and all land lying in alleys, streets, and roads adjoining or abutting the Realty;
- (b) All buildings, improvements, and tenements now or hereafter located on the Realty;
- (c) All fixtures and equipment and other goods, as-extracted items, and timber to be cut (as such terms and categories may be defined or described in the UCC (as defined herein)) now or hereafter affixed to, adapted for use in, or used in connection with, the Realty (whether such items are leased, owned absolutely or subject to any title retaining or security instrument, or otherwise used or possessed) and any and all replacements of, substitutions for, and additions to the foregoing, all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold;
- (d) All easements, all access, air, and development rights, all minerals and oil, gas, and other hydrocarbon substances, all royalties, all water, water rights, and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises, and appurtenances now or hereafter belonging or in any way appertaining to the Realty;

(e) All permits, plans, specifications, construction contracts, engineering and architectural agreements, site plans, plats, drawings, marketing studies, land use agreements, development agreements, utility agreements, covenants, conditions and restrictions, owners associations, master associations, authorizations, approvals, variances, land use entitlements, permits, licenses, and all other agreements, contracts or rights pertaining to the ownership, use, development or operation of the Property;

(f) All of the rents, revenues, issues, profits, and income of the Property belonging or owed to Trustor, and all right, title, and interest of Trustor in and to all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, and all right, title, and interest of Trustor thereunder, including rentals and deposits or payments of similar nature belonging or owed to Trustor; SUBJECT, HOWEVER, to the assignment of rents and other property to Beneficiary herein contained;

(g) All books, records, tax refunds, and general intangibles concerning or related to any or all of the foregoing;

(h) All insurance policies, together with all proceeds thereof, rights thereto, and all unearned premiums returnable upon cancellation; and

(i) All proceeds, products, rents, issues, profits and accounts of any of the foregoing.

**PROVIDED, HOWEVER, if, now or in the future, any of the obligations secured pursuant to any security interest or lien created by this instrument include any Special Flood Zone Loan, then the following shall apply: any such Special Flood Zone Loan shall not be secured pursuant to any security interest or lien created by this instrument in personal property that would constitute "contents" located within Flood Zone Improvements securing such Special Flood Zone Loan, where, for purposes of the foregoing, "Flood Zone Improvements" means any "improved" real property that is located within a Special Flood Hazard Area, a "Special Flood Zone Loan" means a loan, line of credit or other credit facility which is secured by Flood Zone Improvements, and the terms "improved" real property, "Special Flood Hazard Area," and "contents" shall have the meaning ascribed to them by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq., and implementing regulations, 44 C.F.R. Parts 59 et seq., and/or the Federal Emergency Management Agency, all as may be amended from time to time.**

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

(1) Payment of the Loan, with interest thereon at a variable rate based on SOFR, (including, without limitation, post-judgment interest at the Default Rate), according to the terms and provisions of a Construction-To-Permanent Loan Note of even date herewith, payable to Beneficiary or order, and made by Trustor, and all modifications, extensions, renewals, and replacements thereof (the "Note");

(2) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

Page 3 - DEED OF TRUST

Deed of Trust v2

(3) Payment of all other sums which are or which may become owing under the Loan Documents (hereinafter defined); and

(4) Performance of all of Trustor's other obligations under the Loan Documents.

As used herein, the term "Loan Documents" means the Note, this Deed of Trust, the Construction Loan Agreement executed by Trustor (the "Loan Agreement"), the General Security Agreement executed by Trustor (the "Security Agreement"), any Uniform Commercial Code Financing Statement filed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith, together with all modifications, extensions, renewals and replacements thereof.

In addition to the Loan Documents, Trustor has executed an Environmental Compliance and Indemnification Agreement (the "Indemnity Agreement") in connection with the Note and one or more guarantors have guaranteed the Secured Obligations under one or more Guarantees. Notwithstanding any other provision of this Deed of Trust, any other Loan Document, the Indemnity Agreement or the Guarantees, this Deed of Trust does not secure (i) any obligations under the Indemnity Agreement, (ii) any obligations under this Deed of Trust or any other Loan Document that are substantially equivalent to the obligations arising under the Indemnity Agreement; or (iii) any obligations of the guarantors under the Guarantees, and none of these unsecured obligations shall be included in the term "Secured Obligations."

TRUSTOR HEREBY REPRESENTS, WARRANTS, COVENANTS, AND AGREES AS FOLLOWS:

#### ARTICLE I TITLE AND USE

1.1 Warranty of Title. Trustor represents and warrants to Beneficiary that: (a) Trustor has good and marketable title in fee simple to the Realty and is the sole and absolute owner of the Property; (b) the Property is free from liens, encumbrances, exceptions, or other charges of any kind whatsoever other than those easements, restrictions, liens, leases and encumbrances listed in Schedule B, Part I of the policy or policies of title insurance accepted by Beneficiary as of the recordation of this Deed of Trust, the "Permitted Exceptions," and any other liens, encumbrances, exceptions, or charges expressly permitted by the terms of this Deed of Trust, and no others, whether superior or inferior to this Deed of Trust, will be created or suffered to be created by Trustor during the life of this Deed of Trust without the prior written consent of Beneficiary; (c) that no default on the part of Trustor or any other person exists under any of the Permitted Exceptions and, as applicable, all are in full force and effect and in good standing, without modification; and (d) that Trustor has the right to grant, transfer, convey, and assign the Property as herein provided and will forever warrant and defend the Property unto Beneficiary against all claims and demands of any other person whomsoever, subject only to non-delinquent installments of taxes and assessments and Permitted Exceptions.

1.2 Commercial Trust Deed. Trustor represents and warrants to Beneficiary that this Deed of Trust and the Loan are and at all times will be for business and commercial purposes and that no portion of the Loan will be used by Trustor for personal, family or household purposes.

## ARTICLE II TRUSTOR'S COVENANTS

2.1 Payment and Performance of Secured Obligations. Trustor shall pay when due all sums which are now or which may become owing on the Note, and shall pay and perform all other Secured Obligations, in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens, and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III relating to reserves, Trustor shall pay when due directly to the payee thereof all taxes and assessments (including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies, or charges resulting from covenants, conditions, or restrictions) levied, assessed, or charged against or with respect to the Property or this Deed of Trust. Trustor shall promptly furnish to Beneficiary all notices of amounts due under this Section 2.2(a) and all receipts evidencing such payments. Without in any way limiting the generality of the foregoing provisions of this Section 2.2(a), if, during the term of the Loan, there is any change in applicable law which results in Beneficiary being subjected to (i) any tax measured by or based on, in whole or in part, the indebtedness secured hereby or (ii) any portion of any tax payable with respect to the Property, Trustor shall, on demand, pay to Beneficiary the amount of any such tax paid by Beneficiary or shall promptly prepay the Secured Obligations.

(b) Utilities. Trustor shall pay when due all utility charges and assessments for services furnished the Property.

(c) Liens and Charges. Trustor shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of Article IV, Trustor shall promptly discharge any lien or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property. Notwithstanding the foregoing provisions of this Section 2.2(c), Trustor shall not be deemed to be in default under this Section 2.2(c) if and so long as (i) Trustor contests in good faith the validity or amount of any asserted lien or other charge and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, (ii) nonpayment of such lien or charge does not result in the loss or forfeiture of any of the Property or any interest therein, and (iii) Trustor furnishes cash, a surety bond, or other security in form and content and issued by a company satisfactory to Beneficiary, as security for any payment which may ultimately be required to discharge the lien or charge, in an amount equal to 150 percent of the amount of the asserted lien or charge. Beneficiary agrees that a surety bond in the amount required hereunder and

otherwise satisfying the requirements of any applicable law relating to bonding around such a lien or charge shall be satisfactory to Beneficiary under clause (iii) above.

### 2.3 Insurance.

(a) Coverages Required: Trustor shall keep the following insurance coverages in effect with respect to the Property:

(i) Insurance against loss by fire and the hazards now or hereafter embraced by the standard "extended coverage" form of insurance, in an amount equal at all times to the full insurable value of the improvements then located on the Property. All such insurance coverage shall contain a "replacement cost endorsement" satisfactory to Beneficiary.

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the structures on the Property, whichever is less, if the Property is now or hereafter designated as being located within the 100-year flood plain under the federal flood insurance program and if flood insurance is available, together with flood insurance for personal property contents constituting part of the Property and located in such structures in the maximum available amount or the content's insurable value, whichever is less.

(iii) Comprehensive public liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than \$1,000,000 for bodily injury or death to any one person, \$2,000,000 for any one occurrence, and \$1,000,000 for property damage, or in such greater amount(s) as Beneficiary may require.

(iv) Business interruption or loss of rent insurance in an amount not less than one year's rents from the Property.

(v) Insurance against such similar or other hazards, casualties, liabilities, and contingencies, in such forms and amounts, as Beneficiary may from time to time require.

(b) Policies. Each insurance policy shall be issued by a company acceptable to Beneficiary and licensed to do business in the state in which the Property is located and shall be in a form acceptable to Beneficiary. Each hazard insurance policy shall include a Form 438BFU or equivalent mortgagee endorsement in favor of and in form acceptable to Beneficiary, and all insurance policies shall name Beneficiary as an additional insured. All required policies will provide for at least thirty (30) days' written notice to Beneficiary prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Trustor shall furnish to Beneficiary the original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the

carrier, the policy number, and the expiration date. As additional security for the Secured Obligations, Trustor hereby assigns to Beneficiary all insurance policies, together with all proceeds thereof, rights thereto, and all unearned premiums returnable upon cancellation.

(c) Payment; Renewals. Trustor shall promptly furnish to Beneficiary all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III relating to reserves, Trustor shall pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Trustor shall furnish to Beneficiary a renewal policy in a form acceptable to Beneficiary, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.

(i) In the event of any loss, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Trustor hereby authorizes Beneficiary, as Trustor's attorney-in-fact, to make proof of loss, to adjust and compromise any claim, to commence, appear in, and prosecute, in Beneficiary's or Trustor's names, any action relating to any claim and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any claim of \$50,000 or less without the consent of Beneficiary.

(ii) Except with respect to proceeds for damage or loss of \$50,000 or less, all sums paid under any insurance policy required in Section 2.3(a) shall be paid to the Beneficiary. Except with respect to proceeds for damage or loss of \$50,000 or less, provided no Event of Default then exists and Trustor certifies as to same, the net insurance proceeds (after deduction of Beneficiary's costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Beneficiary's sole and absolute judgment: (a) insurance proceeds and additional funds deposited by the Trustor with Beneficiary prior to the commencement of any repair or reconstruction are adequate to complete repair and reconstruction of the Property pursuant to plans and specifications approved by Beneficiary; (b) disbursement procedures acceptable to Beneficiary are in place, which procedures shall include provisions for the deposit of construction shortfalls, collection of lien waivers, issuance of title policies by a title insurance company, payment of Beneficiary's fees and expenses in disbursing, and coordination of work, and Trustor shall have reimbursed Beneficiary for all of its reasonable out-of-pocket expenses in connection with such reconstruction and disbursement, including, without limitation, title insurance fees, inspection fees, attorney's fees, and architect's fees; (c) Beneficiary shall have received such consents and assurances from municipal authorities, commercial tenants in the Property, and others, as Beneficiary may request, including, without limitation, assurances that the commercial tenants are not in default and that the commercial tenants will continue as tenants in the Property upon completion of the repair or reconstruction

work under leases with substantially the same terms as their original leases; and (d) Beneficiary shall have received such assurances as Beneficiary may request that the repairs or reconstruction will be completed by the then current Maturity Date. If the above conditions are not satisfied as to application of insurance proceeds, and in any event as to condemnation awards, Beneficiary shall apply the same (after first deducting therefrom Beneficiary's reasonable expenses incurred in collecting the same, including but not limited to actual attorney fees) to the reduction of the unpaid Principal Amount (as defined in the Note) of the Loan or to payment of the restoration, repair, replacement or rebuilding of the property that is damaged or destroyed in such manner as Beneficiary may determine.

(e) Transfer of Title. If the Property is sold pursuant to Article VIII or if Beneficiary otherwise acquires title to the Property, Beneficiary shall have all of the right, title, and interest of Trustor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

### **WARNING**

Unless Trustor provides Beneficiary with evidence of the insurance coverage as required by this Section 2.3, Beneficiary may purchase insurance at Trustor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Trustor's interest. If the Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Trustor makes or any claim made against Trustor. Trustor may later cancel this coverage by providing evidence that Trustor has obtained property coverage elsewhere.

Trustor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Trustor's debt. If the cost is added to Trustor's debt, the interest rate on the Note will apply to this additional debt. The effective date of coverage may be the date Trustor's prior coverage lapsed or the date Trustor failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance Trustor can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

#### **2.4 Preservation and Maintenance of Property; Right of Entry.**

(a) Preservation and Maintenance. Trustor (i) shall not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) shall not abandon the Property, (iii) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury, or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) shall keep the Property, including improvements, fixtures, equipment, machinery, and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery, and appliances of the Property when necessary to



keep such items in good condition and repair, and (v) shall generally operate and maintain the Property in a manner to ensure maximum revenue.

(b) Alterations. No building or other improvement on the Realty shall be structurally altered, removed, or demolished, in whole or in part, without Beneficiary's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without such consent, unless actually replaced by an article of equal suitability, owned by Trustor, free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.

(c) Right of Entry. Beneficiary is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property, to conduct appraisals or other valuations of the Property, to protect the Property from deterioration or damage, to cause the Property to be put in compliance with any governmental, insurance rating or contract requirements and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder.

(d) Management. Unless Beneficiary agrees otherwise in writing, Trustor shall cause the Property to be managed by a management company reasonably acceptable to Beneficiary. Trustor shall not change the management of the Property without Beneficiary's prior written consent, which shall not be unreasonably withheld or delayed.

2.5 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation or if such areas are otherwise reduced, Trustor shall take all necessary actions to provide parking facilities in kind, size, and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Trustor will furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.6 Use of Property. Trustor shall comply with all laws, ordinances, regulations, and requirements, of any governmental body and all other covenants, conditions, and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Trustor shall not: (i) allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed; (ii) initiate or acquiesce in a change in the land use or zoning classification of the Property; (iii) establish any condominium or cooperative regime with respect to the Property; (iv) subdivide the Realty; or (v) suffer, permit, or initiate the joint assessment of any of the Realty with any other real property constituting a tax lot separate from the Realty which could cause the part of the Realty to be included or assessed under or as part of another tax lot or parcel, or any part of any other property to be included or assessed under or as part of the tax lot or parcels for the Realty.

## 2.7 Condemnation.

(a) Proceedings. Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including, without limitation, change of grade), whether direct or indirect, of the Property or any part thereof or interest therein, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in, and prosecute, in Beneficiary's or Trustor's names, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Beneficiary shall have no obligation to do so. All awards, payments, damages, direct, consequential, and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Beneficiary, and all proceeds of any such awards, payments, damages, or claims shall be paid to Beneficiary subject to the rights of the lessor under any ground lease.

(b) Application of Proceeds. Beneficiary shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.3(d)(ii) relating to the application of insurance proceeds.

2.8 Protection of Beneficiary's Security. Trustor shall give notice to Beneficiary of and shall, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Beneficiary or Trustee therein or the rights or remedies of Beneficiary or Trustee. If any such action or proceeding is commenced, or if Beneficiary or Trustee is made a party to any such action or proceeding by reason of this Deed of Trust, or if Trustor fails to perform any obligation on their part to be performed hereunder, then Beneficiary and/or Trustee, each in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust, to remedy Trustor's failure to perform covenants (without, however, waiving any default by Trustor), or otherwise to protect Beneficiary's or Trustee's interests. Trustor agrees to pay all costs and expenses, including attorneys' fees, of Beneficiary and Trustee thus incurred. This Section 2.8 shall not be construed to require Beneficiary or Trustee to incur any expenses, make any appearances, or take any actions.

2.9 Reimbursement of Beneficiary's and Trustee's Expenses. All amounts disbursed by Beneficiary and Trustee pursuant to Section 2.8 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Trustor secured by this Deed of Trust. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate as provided in the Note (the "Default Rate"), or the maximum rate, if any, which may be collected from Trustor on such amounts by the payee thereof under applicable law, if less.

### ARTICLE III RESERVES

3.1 Deposits. To the extent not paid through disbursements made under the Loan Agreement, Trustor shall, at the time of making each installment payment under the Note, deposit with Beneficiary or its affiliates in a bank control account, a sum, as reasonably estimated by Beneficiary, equal to (a) the taxes and special assessments due on the Property for the next tax year, and (b) if required by Beneficiary, the premiums next due on the insurance policies required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two months prior to the beginning of such tax year or the date when such rents and premiums will become delinquent, as the case may be. Beneficiary may require Trustor to deposit with Beneficiary, in advance, such other sums for other taxes, assessments, premiums, charges, and impositions in connection with the Property as Beneficiary deems necessary to protect Beneficiary's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Beneficiary's option. If requested by Beneficiary, Trustor shall promptly deliver to Beneficiary all bills and notices with respect to any rents, taxes, assessments, premiums, and Other Impositions. All sums deposited with Beneficiary or its affiliates under this Section 3.1 are hereby pledged as additional security for the Secured Obligations.

3.2 Application of Deposits. All sums deposited by Trustor under this Article III shall be held by Beneficiary and applied in such order as Beneficiary elects to pay such rents, taxes, assessments, premiums, and Other Impositions; upon the occurrence of an Event of Default hereunder, such sums may be applied, in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Article III is solely for the added protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each permitted transfer of the Property shall automatically transfer to the grantee all rights of Trustor with respect to any funds accumulated hereunder.

3.3 Adjustment to Deposits. If the total deposits held by Beneficiary under this Article III exceeds the amount deemed necessary by Beneficiary to provide for the payment of such rents, taxes, assessments, premiums, and Other Impositions as the same fall due, then such excess shall, provided no Event of Default then exists hereunder, be credited by Beneficiary on the next due installment or installments of such deposits. If at any time the total of deposits held by Beneficiary is less than the amount deemed necessary by Beneficiary to provide for the payment thereof as the same fall due, then Trustor shall deposit the deficiency with Beneficiary within thirty (30) days after written notice to Trustor stating the amount of the deficiency.

### ARTICLE IV RESTRICTIONS ON TRANSFER, ENCUMBRANCE OR CHANGES

4.1 Restrictions on Transfers of the Property. Neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), assigned, conveyed, delivered

or otherwise transferred, by operation of law or otherwise, by Trustor without Beneficiary's prior written consent. This section does not apply to residential leases entered into in the normal course of Borrower's business.

4.2 Restrictions on Transfers of Interests in Trustor. Without Beneficiary's prior written consent, there shall not be any direct or indirect change or encumbrance of 20% or more cumulative in the ownership of any stock in a corporate Trustor, in the ownership of any general partnership interest in any general or limited partnership Trustor, in the ownership of any membership interest in any limited liability company Trustor, or in the ownership of any beneficial interest in any other Trustor which is not a natural person or persons.

4.3 Restrictions on Changes to Trustor. Trustor will not, without the prior written consent of Beneficiary, change its name, convert from one type of legal entity into another type of legal entity, merge or consolidate into another entity or change its state of organization.

4.4 Permitted Transfers to a Guarantor. Beneficiary's prior consent will not be required for sales or transfers of direct or indirect interests in Trustor into one or more trusts or other entity or persons which are guarantors of the Loan. However, within 10 days after any such transfer, Trustor will notify Beneficiary in writing and provide copies of all relevant transfer documents.

4.5 Management of Trustor. Unless otherwise consented to in writing by Beneficiary, persons who are guarantors of the Loan must retain at least 25% combined ownership in Trustor and retain 100% legal and actual managing control of Trustor.

4.6 Required Information. For any transfer that requires Beneficiary's consent, Trustor and any proposed transferee shall deliver to Beneficiary, sufficiently in advance of any proposed transfer, all information and documentation required by Beneficiary to evidence or facilitate compliance by Trustor, the proposed transferee and Beneficiary with all applicable laws and regulations, including, without limitation, all "know your customer" rules in effect from time to time pursuant to the Bank Secrecy Act, USA PATRIOT Act and other applicable laws. Any failure by Trustor, any actual or proposed transferee, or any necessary third party, to deliver to Beneficiary, in a timely manner, any material information or documentation requested, or any misrepresentation or inaccuracy with respect to such information or documentation, or if Beneficiary reasonably determines that any transfer would potentially violate Beneficiary's regulatory compliance policies or applicable law, shall permit Beneficiary to deny, withdraw or cancel any consent hereunder, without liability.

4.7 Violations of this Article. Any actions under this Article IV taken without Beneficiary's prior written consent where such consent is required, shall constitute an Event of Default hereunder and shall be deemed to increase the risk of Beneficiary, and Beneficiary may declare all sums secured hereby immediately due and payable.

4.8 Trustor Remains Liable. Notwithstanding any permitted transfer, or any other sale, assignment, conveyance, delivery or other transfer, by operation of law or otherwise, of any or all

of Trustor's assets or allocation of Trustor's liabilities related to or resulting from a merger, division, or otherwise, Trustor shall remain fully liable to Beneficiary for payment of the Loan.

4.9 Payment of Beneficiary's Costs. As a condition to obtaining Beneficiary's consent under this Article IV, Trustor will pay all of Beneficiary's costs, including, but not limited to, Beneficiary's attorney fees and Beneficiary's internal expenses, which internal expenses are estimated to be at least 0.10% of the maximum principal amount of the Loan to compensate Beneficiary for reviewing and consenting to any such action.

## ARTICLE V UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

5.1 Grant to Beneficiary. This Deed of Trust constitutes a security agreement pursuant to the Utah Uniform Commercial Code (the "UCC") with respect to any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust (the "Article 9 Property"), and Trustor hereby grants Beneficiary a first and prior security interest in all Article 9 Property to secure the payment of the Secured Obligations.

5.2 Beneficiary's Rights and Remedies. With respect to the Article 9 Property subject to the foregoing security interest, Beneficiary has all of the rights and remedies (i) of a secured party under the UCC, (ii) provided herein, including, without limitation, the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Beneficiary may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies. Upon demand by Beneficiary following an Event of Default hereunder, Trustor shall assemble any items of personal property and make it available to Beneficiary at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Article 9 Property or of the time of or after which any private sale or any other intended disposition is to be made, and such notice shall constitute reasonable notice to Trustor. Any person permitted by law to purchase at any such sale may do so. Such Article 9 Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Article 9 Property shall be borne by Trustor.

5.3 Financing Statement. Trustor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder. Further, by signing this Deed of Trust (which includes a security agreement), Trustor authorizes the filing of an initial financing statement, and an amendment, covering (i) the Article 9 Property and (ii) property which becomes collateral under UCC Section 9-315(a)(2). Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Trustor hereby represents and warrants to Beneficiary that (i)

Trustor's chief executive office is in the State of Utah at the address set forth in the first paragraph of this Deed of Trust and (ii) the information set forth on the attached Exhibit B is true and correct.

5.4 Fixture Filing. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Trustor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

## ARTICLE VI ASSIGNMENT OF RENTS AND LEASES

6.1 Assignment. As part of the consideration for the indebtedness evidenced by the Note, and not as additional security therefor, Trustor hereby assigns and transfers to Beneficiary (a) all right, title, and interest of Trustor in and to any and all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals, and replacements thereof (collectively, "Leases"), and all right, title, and interest of Trustor thereunder, including, without limitation, all cash or security deposits, advance rentals and deposits, or payments of a similar nature, (b) any and all guaranties of tenants' or occupants' performances under any and all Leases, and (c) all rents, issues, profits, and revenues (collectively, "Rents") which are now due, which may become due, or to which Trustor is now or may hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including, without limitation, minimum, additional, percentage, and deficiency rents and liquidated damages, including Trustor's right, power and authority to modify the terms of any such Leases, or extend or terminate any such Leases. It is the intention of Trustor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Trustor's right, title and interest in, to and under the Leases. Trustor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the state in which the Property is located, then the Leases shall be included as a part of the Property and it is the intention of Trustor that in this circumstance this Deed of Trust create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust.

6.2 Trustor's Rights to Collect Rent. Notwithstanding the foregoing, Trustor shall have the right to collect, but not prior to accrual, all of the Rents and to retain, use and enjoy the same unless and until a default shall occur in the payment when due of any interest or principal under the Note or if an Event of Default shall occur hereunder or under any other instrument now or hereafter securing the Note. Trustor shall not receive or accept Rent under any Lease for more than one month in advance.

6.3 Trustor's Rights Under Leases Prior to Default. Until Beneficiary gives notice to Trustor of Beneficiary's exercise of its rights under this Article, Trustor shall have all rights, power and

authority granted to Trustor under any Lease (except as otherwise limited by this Article), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Notwithstanding the foregoing, Trustor will not modify the terms of any non-residential lease in a way which has the effect of reducing the tenant's Rent without Beneficiary's prior written consent, which will not be unreasonably withheld or delayed. Upon the occurrence of an Event of Default, the permission given to Trustor pursuant to this section to exercise all rights, power and authority under Leases shall automatically terminate. Trustor shall comply with and observe Trustor's obligations under all Leases, including Trustor's obligations pertaining to the maintenance and disposition of tenant security deposits.

6.4 Beneficiary's Obligations Prior to Entry. Trustor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Article shall not be construed to make Beneficiary a mortgagee-in-possession of the Property so long as Beneficiary has not itself entered into actual possession of the Property. The acceptance by Beneficiary of the assignment of the Leases pursuant to this Article shall not at any time or in any event obligate Beneficiary to take any action under this Deed of Trust or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Beneficiary's actual entry into and taking possession of the Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to any Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

6.5 Beneficiary's Rights After an Event of Default. Upon delivery of notice by Beneficiary to Trustor of Beneficiary's exercise of Beneficiary's rights under this Article at any time after the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by law, Beneficiary immediately shall have all rights, powers and authority granted to Trustor under any Lease, including the right, power and authority to modify the terms of any Lease, or extend or terminate any Lease.

## ARTICLE VII EVENTS OF DEFAULT

7.1 Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

- (a) The occurrence of an Event of Default under the Note or the Loan Agreement.
- (b) Failure to perform any other covenant, agreement, or obligation under this Deed of Trust (other than Article IV), the Indemnity Agreement or the Guaranty, and to the extent

there is no cure period in such document, and the failure to cure such non-performance within twenty (20) days after written notice thereof given to Trustor or Guarantors, as applicable, by Beneficiary or, if such cure cannot be completed within such 20-day period through the exercise of diligence, the failure by Trustor or Guarantors, as applicable, to commence the required cure within such 20-day period and thereafter to continue and complete the cure with diligence.

(c) A violation of Article IV.

(d) Trustor, or any other party liable for, or whose assets or any interest therein secures, payment of any of the amounts due related to this Deed of Trust, without the Beneficiary's prior written consent, engages in, agrees to or approves a plan for (a) reorganization, (b) merger or consolidation, (c) division into (or of) one or more entities or series of entities or allocation or transfer of any of Trustor's assets or liabilities as a result of such a division, (d) conversion to another form of business entity, or (e) dissolution of Trustor or cessation by Trustor as a going business concern.

7.2 Form of Notice. At Beneficiary's option, any written notice of default required to be given to Trustor under Section 7.1 may be given in the form of a statutory notice of default under the laws of the State of Utah relating to non-judicial foreclosures of trust deeds.

## ARTICLE VIII REMEDIES

8.1 Acceleration Upon Event of Default; Additional Remedies. During the existence of an Event of Default hereunder, Beneficiary may, at its option and without notice to or demand upon Trustor:

- (a) Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately.
- (b) Bring a court action to enforce the provisions of, or any of the indebtedness or obligations secured by, this Deed of Trust.
- (c) Bring a court action for appointment of a receiver.
- (d) Foreclose this Deed of Trust as a mortgage.
- (e) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (f) Exercise any or all of the rights and remedies provided for herein in the Event of Default hereunder.
- (g) Exercise any other right or remedy available under law or in equity.



8.2 Appointment of Receiver. If Beneficiary applies to a court for appointment of a receiver, Beneficiary's right to appointment will be without regard to the adequacy of Beneficiary's security or Trustor's solvency. Any receiver will have the right and power to take any or all actions necessary or desirable to manage, maintain and operate the Property. If Beneficiary elects to seek the appointment of a receiver for the Property, Trustor, by its execution of this Deed of Trust, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. The receiver shall be entitled to receive a reasonable fee for managing the Property. Immediately upon appointment of a receiver, Trustor shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits and prepaid Rents. Trustor will be responsible for all costs and expenses related to the receiver.

8.3 Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Beneficiary or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, and failure of Trustor to cure the default and reinstate the obligation and this Deed of Trust as allowed by law, the Trustee may sell the Property upon any terms and conditions specified by Beneficiary and permitted by applicable law. Request is hereby made that a copy of a notice of default and a copy of notice of sale through this Deed of Trust be given to Trustor at Trustor's address as stated in this Deed of Trust. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Beneficiary in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal, and mixed, may be sold in one parcel. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

8.4 Application of Sale Proceeds. The proceeds of any sale under this Deed of Trust will be applied in the order and manner required by law

8.5 Waiver of Order of Sale and Marshaling. Trustor waives all rights to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust, and also any right to have any of the Property marshaled upon any sale.

8.6 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of any partial payment, Rents, the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.7 Expenses During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Property is sold at a foreclosure sale, the purchaser may, during any redemption period

allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection, and insuring thereof. Any sums so paid, together with interest thereon from the time of such expenditure at the Default Rate, or the highest rate permitted by applicable law, if less, shall be added to and become a part of the amount required to be paid for redemption from such sale.

8.8 Foreclosure Subject to Tenancies. Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

8.9 Evasion of Prepayment Terms. If an Event of Default hereunder has occurred and is continuing, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by Trustor, their successors or assigns, or anyone acting on behalf of Trustor or their successors or assigns, shall constitute an evasion of the prepayment terms, if any, of the Note and be deemed to be a voluntary prepayment thereunder and any such payment, to the extent permitted by law, will, therefor, include the additional payment required under the prepayment privilege, if any, contained in the Note.

8.10 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Beneficiary and Trustor, and may be exercised concurrently, independently, or successively, in any order whatsoever. Beneficiary may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.11 Beneficiary's and Trustee's Expenses. Trustor shall pay all of Beneficiary's and Trustee's expenses incurred in any effort to enforce any terms of this Deed of Trust, whether or not any suit is filed, including, without limitation, attorneys' fees and disbursements, foreclosure costs, and title charges. All such sums, with interest thereon, shall be additional indebtedness of Trustor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate, or the maximum rate which may be collected from Trustor under applicable law, if less.

8.12 Late Charges. If Trustor fails to pay any amount due and owing pursuant to the Note or any other agreement executed and delivered to Beneficiary in connection with the Note, including, without limitation, any Escrow payment due and owing, Trustor shall pay to Beneficiary a late charge pursuant to the terms of the Note.

## ARTICLE IX GENERAL

9.1 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Beneficiary under the Note or this Deed of Trust shall be applied by Beneficiary in the following order of priority: (a) amounts payable to Beneficiary by Trustor under Article III for reserves, if any; (b) interest and late charges payable on the Note; (c) interest

payable on advances made to protect the security of this Deed of Trust; (d) principal of the Note; (e) principal of advances made to protect the security of this Deed of Trust; and (f) any other sums secured by this Deed of Trust in such order as Beneficiary, at its option, may determine.

9.2 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and shall surrender to Trustee this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

9.3 Successor Trustee. In accordance with applicable law, Beneficiary may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power, and duties conferred upon the Trustee herein and by applicable law.

9.4 Beneficiary's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations, Beneficiary, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, consent or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or the creating of any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Trustor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Beneficiary's option, for any such action if taken at Trustor's request.

9.5 Subrogation. Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

9.6 No Violation of Usury Laws. Interest, fees, and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees, or charges would exceed any such maximum and Trustor is entitled to the benefit of such law, then (a) such interest, fees, or charges shall be reduced to the permitted maximum; and (b) any sums already paid to Beneficiary which exceeded the permitted maximum shall be refunded. Beneficiary may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. The provisions of this Section 9.6 shall control over any inconsistent provision of this Deed of Trust, the Note, or any other Loan Documents.

9.7 Additional Documents; Power of Attorney. From time to time, upon request of Beneficiary, Trustor shall, and shall cause its affiliates to, at its expense, execute, acknowledge, and deliver to Beneficiary, and hereby irrevocably appoints Beneficiary its attorney-in-fact to execute, acknowledge, deliver, and, if appropriate, file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates, and other documents, in form and substance satisfactory to Beneficiary, as Beneficiary may reasonably request in order to perfect, preserve, continue, extend, or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Trustor shall, among other things, cause 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 Beneficiary, (i) assuming or guarantying the Trustor's obligations under this Deed of Trust and all related agreements and (ii) pledging assets to the Beneficiary to the same extent as the Trustor. Trustor shall pay to Beneficiary upon request therefor all reasonable costs and expenses incurred in connection with the preparation, execution, recording, and filing of any such document.

9.8 Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any other right or remedy, and no waiver by Beneficiary of any particular default by Trustor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Beneficiary's receipt of any awards, proceeds, or damages under Sections 2.3 or 2.7 operate to cure or waive Trustor's default in payment of sums secured by this Deed of Trust.

9.9 Modifications. This Deed of Trust cannot be waived, changed, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought.

9.10 Expenses. Trustor shall pay to Beneficiary on demand all costs and expenses (including attorneys' fees and disbursements whether for internal or outside counsel) incurred by Beneficiary in connection with the Secured Obligations or this Deed of Trust including costs of collection, of preserving or exercising any right or remedy of Beneficiary under this Deed of Trust or any related security agreement or guaranty, of workout or bankruptcy proceedings by or against Trustor, of defending against any claim asserted as a direct or indirect result of the Secured Obligations, of any appraisal required by the Beneficiary or of performing any obligation of any Trustor pursuant to this Deed of Trust or otherwise (including payment of any amount any Trustor is obligated to pay pursuant to this Deed of Trust and performance of any obligation of Trustor pursuant to this Deed of Trust). Trustor agrees to defend and indemnify Beneficiary from any and all third party claims arising from Trustor's duties as owner and/or occupant of the Premises, and further agrees to pay, upon demand, any expense that Beneficiary may incur (including attorneys' fees and

disbursements whether for internal or outside counsel) due to Trustor's failure to provide appropriate defense and indemnification to Beneficiary in a timely manner. Beneficiary reserves the right to have Trustor pay, upon demand, administrative fee(s) in regard to any administrative action Beneficiary is required or requested to take including the preparation of discharges, releases or assignments to third parties. Costs and expenses shall accrue interest at the default rate set forth in the Note from the date of demand until payment is actually received by Beneficiary. Each such cost and expense and any interest thereon shall constitute part of the Secured Obligations and be secured by this Deed of Trust.

9.11 Notice. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Trustor (at its address on Beneficiary's records) or to Beneficiary (at the address at the beginning of this Deed of Trust and separately to Beneficiary's officer responsible for Trustor's relationship with Beneficiary). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal service and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Trustor and Beneficiary. Request is hereby made that a copy of a notice of default and a copy of notice of sale through this Deed of Trust be given to the Trustor at Trustor's address as stated in this Deed of Trust."

9.12 Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of Utah. If any provision of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable.

9.13 Captions; Exhibits. The captions and headings of the sections and articles of this Deed of Trust are for convenience only and shall not be used to interpret or define the provisions hereof. All exhibits referred to in and attached to this Deed of Trust are incorporated herein by reference.

9.14 Definitions. As used herein, the term "Trustor" means the Trustor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "Trustee" means the Trustee herein named, together with any successor Trustee; and the term "Beneficiary" means the beneficiary herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees, and participants.

9.15 Successors and Assigns Bound; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors, and assigns, subject to the provisions of Article IV. All obligations of Trustor hereunder are joint and several. In exercising any rights hereunder or taking actions provided for herein, Beneficiary and Trustee may act through their respective employees, agents, or independent contractors as authorized by Beneficiary and Trustee.

9.16 Number; Gender. This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.17 Time. Time is of the essence in connection with all obligations of Trustor under this Deed of Trust, the Note, and the Loan Documents.

9.18 Attorneys' Fees. In the event suit or action is instituted to enforce or interpret any provision of this Deed of Trust, Trustor agrees to pay Beneficiary's expenses in connection therewith, including, without limitation, such amount as the court may adjudge reasonable as attorneys' fees at trial or on appeal. Any such expenses shall be additional indebtedness of Trustor secured by this Deed of Trust, shall be immediately due and payable, and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time or at the maximum rate, if any, permitted under applicable law, if less.

9.19 Waiver of Jury Trial. **TRUSTOR AND BENEFICIARY HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF THE BENEFICIARY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER ACKNOWLEDGES THAT TRUSTOR HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS AND COLLATERAL DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF TRUSTOR'S OWN FREE WILL, AND THAT TRUSTOR HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

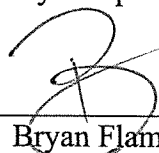
[Signature is on the next page.]

**SIGNATURE PAGE  
DEED OF TRUST**

Decker Lake QOZB, LLC, a Utah limited liability company

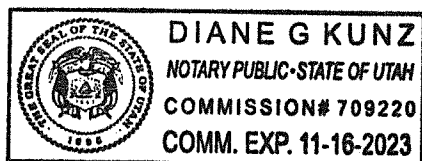
By: Decker Lake OZ Fund, LLC, a Utah limited liability company, its Managing Member

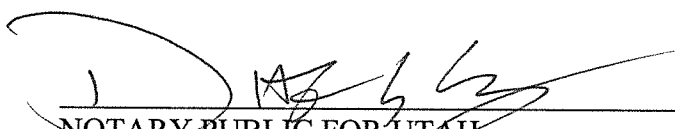
By: DAI Managers LLC, a Utah limited liability company, its Manager

By:   
Bryan Flamm, Manager

STATE OF UTAH                    )  
  ) ss.  
County of Salt Lake        )

On December 7<sup>th</sup> 2022, before me, the undersigned Notary Public in and for said State, personally appeared Bryan Flamm who said he is a Manager of DAI Managers LLC, a Manager of Decker Lake OZ Fund, LLC, the Managing Member of Decker Lake QOZB, LLC and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR UTAH  
My Commission Expires: 11-16-2023

**EXHIBIT A**  
**LEGAL DESCRIPTION**

All of that real property described in Deed Entry No. 13344144 and Entry No. 13344143 in the official records of the Salt Lake County Recorder, being located in the Northwest Quarter of Section 27, Township 1 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, West Valley City, Salt Lake County, Utah, being described by survey as follows:

Beginning at a point on the northerly line of that real property described in Deed Entry No. 13344144 in the official records of the Salt Lake County Recorder, said point being located S89°57'49"W along the Section Line 1749.96 feet and S00°02'11"E 281.39 feet from the North 1/4 Corner of Section 27, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence along said real property the following nine (9) courses: S68°12'40"E 74.99 feet; thence S23°18'00"W 433.83 feet; thence South 206.55 feet; thence S43°45'08"E 145.24 feet to a point on the Westerly line of widened Decker Lake Drive (1935 West Street) as described in Deed Entry No. 10992776 in the official records of the Salt Lake County Recorder; thence continuing along said real property and the westerly line of Decker Lake Drive the following six (6) courses: S46°15'41"W 64.16 feet; thence S01°15'57"W 28.28 feet; thence S46°15'57"W 90.60 feet; thence S43°28'01"W 225.27 feet; thence S46°15'57"W 826.78 feet; thence S50°16'20"W 33.60 feet to the southerly corner of that real property described in Deed Entry No. 13344143 in the official records of the Salt Lake County Recorder; thence along said real property the following three (3) courses: N00°01'25"W 706.78 feet; thence N89°59'21"W 121.72 feet; thence N41°16'22"E 473.45 feet to a point on the westerly line of that real property described in Deed Entry No. 13344144 in the official records of the Salt Lake County Recorder; thence N07°06'36"W along said real property 40.48 feet to the southeasterly right-of-way line of Decker Lane as defined on the Decker Land and Decker Lake Boulevard Extension street dedication plat on file in the office of the Salt Lake County Recorder; thence along said right-of-way line the following eight (8) courses: N41°20'40"E 108.91 feet; thence along the arc of a curve to the right 150.71 feet with a radius of 181.62 feet through a central angle of 47°32'39", chord: N65°06'59"E 146.42 feet; thence N88°53'19"E 94.99 feet; thence along the arc of a curve to the left 173.37 feet with a radius of 261.75 feet through a central angle of 37°56'58", chord: N69°54'50"E 170.22 feet; thence N50°56'21"E 91.66 feet; thence along the arc of a curve to the left 160.05 feet with a radius of 245.00 feet through a central angle of 37°25'44", chord: N32°13'29"E 157.22 feet; thence N13°30'37"E 74.67 feet; thence along the arc of a curve to the right 84.10 feet with a radius of 193.24 feet through a central angle of 24°56'04", chord: N25°58'39"E 83.43 feet; thence S68°12'40"E 41.23 feet to the point of beginning.



**EXHIBIT B  
FIXTURE FILING**

This instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Realty is located with respect to any and all fixtures included in the term Property as used herein and with respect to any goods or other personal property that may now be or hereafter becomes fixtures.

Name and address of Beneficiary (Secured Party) from whom information may be obtained:

M&T Bank  
Commercial Real Estate  
One M&T Plaza  
Buffalo, NY 14203  
Attention: Cannon Gerstner

Mailing address of Trustor (Debtor):

Decker Lake QOZB, LLC  
14034 S. 145 East, Suite 204  
Draper, Utah 84020  
Attn: Bryan Flamm

Information for entity Trustor:

| <b>Entity</b>         | <b>State of<br/>Organization</b> | <b>Type of<br/>Organization</b> | <b>Organization<br/>Number</b> |
|-----------------------|----------------------------------|---------------------------------|--------------------------------|
| Decker Lake QOZB, LLC | Utah                             | LLC                             | 11817302-0160                  |