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Salt Lake City, Utah 84111

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(Security for Construction Loan)**

**Coversheet Recording Information:**

TRUSTOR: **MILLCREEK COVE APARTMENTS, LLC**, a  
Utah limited liability company

BENEFICIARY: **READY MADE CONCRETE, INC.**, a Utah  
corporation

TRUSTEE: **MATTHEW MOSCON**, an active member of the  
Utah State Bar

ASSESSOR'S PROPERTY TAX PARCEL: 16-31-378-018-0000

*For purposes of Chapter 9a of the Uniform Commercial Code of Utah, this Deed of Trust constitutes a Security Agreement with the Trustor being the Debtor and the Beneficiary being the Secured Party. This Deed of Trust also constitutes a Financing Statement filed as a fixture filing pursuant to Chapter 9a of the Uniform Commercial Code of Utah.*

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

**(Security for Construction Loan)**

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Security Instrument**") is made as of April 15, 2018, by **MILLCREEK COVE APARTMENTS, LLC**, a Utah limited liability company, having its principal place of business at 3965 South 300 East, Salt Lake City, Utah 84107, as trustor ("**Trustor**"), to **MATTHEW MOSCON AT STOEL RIVES LLP**, as trustee ("**Trustee**") having an address at 201 South Main Street Suite 1100, Salt Lake City, Utah 84111, for the benefit of **READY MADE CONCRETE, INC.**, a Utah corporation, having an address at 2635 South Constitution Blvd., West Valley City, Utah 84119 ("**Beneficiary**" or "**Lender**").

**W I T N E S S E T H:**

WHEREAS, this Security Instrument is given to secure a loan (the "**Loan**") in the principal sum of **NINETY ONE THOUSAND AND NO/100 DOLLARS (\$91,000.00)** or so much thereof as may be advanced pursuant to that certain Construction Contract dated as of March 15, 2018 between Now Construction Services LLC ("**Contractor**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") for services and materials to be provided with respect to the Property (as defined below) and evidenced by one or more promissory notes made by Trustor and delivered to Lender (as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time, collectively, the "**Notes**");

WHEREAS, Trustor desires to secure the payment of the Loan, including the payment of other costs, expenses, fees and interest relating to the Loan, all in accordance with the terms of the Loan Documents (as defined below), and the other obligations of Trustor under the Loan Documents and the performance of all of its obligations under the Notes, the Loan Agreement and the other Loan Documents (collectively, the "**Debt**"); and

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement and secures the payment, fulfillment, and performance by Contractor and Trustor of the obligations thereunder and under the other Loan Documents, and each and every term and provision of the Loan Agreement and the Notes, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and will be considered a part of this Security Instrument. The Loan Agreement, the Notes, this Security Instrument, and all other documents evidencing or securing the Debt or delivered in connection with the making of the Loan, but specifically excluding the Indemnity (as defined in the Loan Agreement), together with all amendments, restatements, replacements, extensions, renewals, supplements or other modifications of any of the foregoing, are hereinafter referred to collectively as the "**Loan Documents**."

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## Article 1 - GRANTS OF SECURITY

Section 1.1 Property. Trustor does hereby irrevocably grant, pledge, assign, warrant, transfer, and convey to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, and grant a security interest to Lender, in the following property, rights, interests and estates whether Trustor now has or hereafter acquires ownership or other rights therein or is deemed by law to have rights or the power to convey rights therein (collectively, the "Property");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental deed of trust or mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Trustor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Trustor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Trustor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of

the Improvements or the Land, including engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Trustor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**");

(g) **Personal Property.** All personal property of Trustor which Trustor now or hereafter owns or in which Trustor now or hereafter acquires an interest or right, including without limitation, all furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, wherever located (including Stored Materials located off-site), which is used at or in connection with, or located within or about, the Land and the Improvements, or used or which it is contemplated will be used at or in connection with the development or construction of the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above. Trustor represents, warrants and covenants that the Personal Property is not used or bought for personal, family or household purposes;

(h) **Leases and Rents.** All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**") and all right, title and interest of Trustor, its successors and assigns therein and thereunder, including all cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of

whatever form or nature received by or paid to or for the account of or benefit of Trustor or its agents or employees from any and all sources arising from or attributable to the Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Trustor or Property Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations (as hereinafter defined);

(i) Condemnation Awards. All awards or payments (including any administrative fees or attorneys’ fees), including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds (including any administrative fees or attorneys’ fees) in respect of the Property under any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including the right, upon the happening of any default hereunder, to receive and collect any sums payable to Trustor thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Trustor with respect to the Property, including all accounts established or maintained pursuant to the Loan Documents; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property

held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Greater Estate. All right, title and interest of Trustor now owned or hereafter acquired by Trustor in and to any greater estate in the Land or the Improvements;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Trustor expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, will for the purposes of this Security Instrument be deemed conclusively to be real estate and encumbered hereby.

Section 1.2 Assignment of Rents. Trustor hereby absolutely and unconditionally collaterally assigns to Lender, all of Trustor's right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Security Instrument, Lender grants to Trustor a revocable license to collect, receive, use and enjoy the Rents. Trustor will hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations (as hereinafter defined), for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Security Instrument, Trustor hereby grants to Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "**Collateral**"). If an Event of Default occurs, Trustee and Lender, in addition to any other rights and remedies which it may have, will have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Trustee or Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Trustee or Lender after the occurrence of an Event of Default, Trustor will, at its expense, assemble the Collateral

and make it available to Trustee or Lender at a convenient place (at the Land if tangible property) acceptable to Trustee or Lender. Trustor will pay to Trustee and/or Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Trustee and/or Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence of an Event of Default. Any notice of sale, disposition or other intended action by Trustee or Lender with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, will, except as otherwise provided by applicable law, constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Obligations (as hereinafter defined) in such priority and proportions as Lender in its discretion deems proper. The principal place of business of Trustor (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, will operate also as a financing statement naming Trustor as Debtor and Lender as Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Trustor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan and pursuant to the terms and conditions of the Loan Documents, including the Net Proceeds, and any sums deposited in the Required Accounts, as additional security for the Obligations (as hereinafter defined) until expended or applied as provided in this Security Instrument or the Loan Agreement.

#### CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns;

PROVIDED, HOWEVER, this grant is made upon the express condition that, if Trustor and/or Contractor pays to Lender the Obligations (as hereinafter defined) at the time and in the manner provided in the Loan Documents, and performs the Obligations in the time and manner set forth in the Loan Documents and complies with each and every covenant and condition set forth herein and in the other Loan Documents, the estate hereby granted will cease, terminate and be void, Lender will request Trustee to reconvey the Property, and Trustee will reconvey the Property without warranty to the person or persons legally entitled thereto; provided, however, that Trustor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof will survive any such payment or release and the recitals therein of any matters or facts will be conclusive proof of the truthfulness thereof. As a condition to any such satisfaction or reconveyance, Trustor covenants and agrees to pay Lender's and Trustee's reasonable fees and expenses (including attorneys' fees and expenses) in connection with reconveying the Property.

## Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, collateral assignments and transfers made in Article 1 are given for the purpose of securing the Debt which includes, but is not limited to, the obligations of Trustor and/or Contractor to pay to Lender the principal and interest owing pursuant to the terms and conditions of the Notes and the Loan Agreement. All advances made by Lender pursuant to the Loan Agreement will constitute the Debt, and such advances will be deemed to be obligatory.

Section 2.2 Other Obligations. This Security Instrument and the grants, collateral assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

(a) the payment and performance of all other obligations of Trustor contained herein, including all fees and charges payable by Trustor;

(b) the payment and performance of each obligation of Trustor and Contractor contained in the Loan Agreement and any other Loan Document, including all fees and charges payable by Trustor and/or Contractor; and

(c) the performance of each obligation of Trustor and/or Contractor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Notes, the Loan Agreement or any other Loan Document.

Section 2.3 Debt and Other Obligations. Trustor's and Contractor's obligations for the payment of the Debt and the performance of the Other Obligations will be referred to collectively herein as the "Obligations." All persons who may have or acquire an interest in the Property are hereby deemed to have notice of the terms of the Obligations and that this Security Instrument secures future advances, and to have notice, if provided therein, that: (a) the Notes, the Loan and the other Obligations may permit borrowing, repayment and reborrowing and (b) the rate of interest on one or more of the Obligations may vary from time to time. Absent default under the terms of the Obligations, all advances thereunder by Lender are obligatory and are secured by this Security Instrument. All such obligatory advances will have the same priority as the funds initially advanced under any such Obligation.

Section 2.4 Unsecured Obligations. Notwithstanding anything to the contrary set forth herein or in any of the Loan Documents, this Security Instrument will not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under any indemnity in the Loan Agreement, and (b) any other obligations in this Security Instrument or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of hazardous substances and are the same or have the same effect as any of the obligations evidenced by or arising under an indemnity.

## Article 3 - TRUSTOR COVENANTS

Trustor covenants and agrees that:



Section 3.1 Payment of Obligations. Trustor will pay and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Notes and this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Notes and (c) all and any of the other Loan Documents (other than any indemnity), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Trustor will obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Trustor and the Property as Lender may reasonably require and the proceeds thereof shall be collected by Lender to be applied or disbursed as set forth herein. In the event Trustor fails to obtain, maintain, keep in force or deliver to Lender the policies of insurance required by Lender, Lender may (but has no obligation to) procure such insurance or single-interest insurance for such risks covering Lender's interests, and Trustor will pay all premiums thereon promptly upon demand by Lender, and until such payment is made by Trustor, the amount advanced by Lender with respect to all such premiums will, at Lender's option, bear interest at the Default Rate.

Section 3.4 Maintenance of Property. Trustor will cause the Property to be maintained in a good and safe condition and repair and otherwise in accordance with the Loan Agreement. The Improvements, the Fixtures, the Equipment and the Personal Property will not be removed, demolished or altered without the consent of Lender other than in accordance with the terms and conditions of the Loan Agreement. Trustor will promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation, and will complete and pay for any structure at any time in the process of construction or repair on the Land, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair (unless Lender elects under Section 3.10 below to have Insurance Proceeds applied to payment of the Obligations).

Section 3.5 Waste. Trustor will not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy which Trustor is obligated to maintain pursuant to the Loan Agreement, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Trustor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof; provided, however, that, for the avoidance of doubt, the foregoing shall not prohibit excavation in connection with the construction of the Improvements as contemplated by the Plans.

Section 3.6 Payment for Labor and Materials.

(a) Trustor will promptly pay when due all bills and costs for labor and materials ("**Labor and Material Costs**") incurred in connection with the Property and not permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security

interest, even though inferior to the liens and the security interests hereof, and in any event not permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or Security Interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Trustor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Default or Event of Default exists, (ii) either (A) such proceeding will suspend the collection of the Labor and Material Costs from Trustor and from the Property, or (B) Trustor has paid all of the Labor and Material Costs under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Trustor or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (v) Trustor has furnished such security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon. Lender may pay over any such security or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Labor and Material Costs becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

### Section 3.7 Payment of Liens, Taxes and Impositions.

(a) Trustor will pay, or cause to be paid when due, all real property taxes and assessments, general and special, and all other taxes, assessments, duties, levies, imposts, deductions, charges or withholdings, of any kind or nature whatsoever, including nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create or may create a lien upon the Property (all the foregoing, collectively, "**Impositions**").

(b) After prior notice to Lender, Trustor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Impositions, provided that (i) no Default or Event of Default exists, (ii) either (A) such proceeding will suspend the collection of the Impositions from Trustor and from the Property, or (B) Trustor has paid all of the Impositions under protest, (iii) such proceeding is permitted and conducted in accordance with the provisions of any other instrument to which Trustor or the Property is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Trustor will promptly upon final determination thereof pay the amount of any such Impositions, together with all costs, interest and penalties which may be payable in connection therewith, and (vi) Trustor has furnished such security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Impositions, together with all interest and penalties thereon. Lender may pay over any such security or part thereof held by Lender to the claimant entitled

thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) is in danger of being sold, forfeited, terminated, cancelled or lost or there is any danger of any Lien related to the contested Impositions becoming senior in priority, in whole or in part, to the Lien of the Security Instrument.

Section 3.8 Change of Name, Jurisdiction. In addition to the restrictions contained in the Loan Agreement, Trustor will not change Trustor's name, identity (including its trade name or names) or jurisdiction of formation or organization unless Trustor has first obtained the prior written consent of Lender to such change, and has taken all actions necessary or required by Lender to file or amend any financing statements or continuation statements to assure perfection and continuation of perfection of security interests under the Loan Documents. Trustor will notify Lender in writing of any change in its organizational identification number at least thirty (30) days in advance of such change becoming effective. If Trustor does not now have an organizational identification number and later obtains one, Trustor will promptly notify Lender in writing of such organizational identification number. At the request of Lender, Trustor will execute a certificate in form satisfactory to Lender listing the trade names under which Trustor intends to operate the Property, and representing and warranting that Trustor does, and has previously never done, business under no other trade name with respect to the Property.

Section 3.9 Utilities. Trustor will pay or cause to be paid when due all utility charges that are incurred by Trustor for the benefit of the Property or that may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Property or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

Section 3.10 Casualty. After obtaining knowledge of the occurrence of any damage, destruction or other casualty to the Property or any part thereof, whether or not covered by insurance, Trustor must immediately notify Lender in writing. In the event of such casualty, all proceeds of insurance (collectively, the "**Insurance Proceeds**") must be payable to Lender and no other party, and Trustor hereby authorizes and directs any affected insurance company to make payment of such Insurance Proceeds directly to Lender and no other party. If Trustor receives any Insurance Proceeds, Trustor must pay over such Insurance Proceeds to Lender within two (2) Business Days after Trustor's receipt thereof. Lender is hereby authorized and empowered by Trustor as Trustor's attorney-in-fact to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance; provided, however, that Agent shall have no obligation to do so and Lender shall not exercise its rights under such power of attorney except upon the occurrence and during the continuation of an Event of Default. In the event of a foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the insurance policies required by the Loan Agreement that are then in force, and all Insurance Proceeds payable thereunder, will vest in the purchaser at such foreclosure or in Lender or other transferee in the event of such other transfer of title. Nothing herein will be deemed to excuse Trustor from repairing or maintaining the Property as provided in this Security Instrument or restoring all damage or destruction to the Property, regardless of the availability or sufficiency of Insurance Proceeds, unless Lender elects under Section 3.12 to have Insurance Proceeds applied to payment of the Obligations, and the application or release by Lender of any Insurance Proceeds

will not cure or waive any Default, Event of Default or notice of Default or Event of Default or invalidate any action taken by or on behalf of Lender pursuant to any such notice.

Section 3.11 Condemnation. If any proceeding or action is commenced for the taking of the Property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same is taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor must promptly notify Lender in writing. Trustor authorizes Lender, at Lender's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Lender's or Trustor's name, 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 Lender will not act under such power of attorney except upon the occurrence and during the continuation of an Event of Default. Lender will not be liable to Trustor for any failure by Lender to collect or to exercise diligence in collecting any such compensation for a taking unless due to the gross negligence or willful misconduct of Lender. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage to the Property or any part thereof or any interest therein for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation proceeding, or in any other manner (the "Condemnation Proceeds") are hereby collaterally assigned to Lender and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Lender may reasonably require. Trustor may not compromise or settle any claim resulting from the condemnation proceeding which results in the Condemnation Proceeds being greater than or equal to Five Thousand Dollars (\$5,000) less than Lender's reasonable estimate of the damages resulting from the taking. Whether or not there is then any uncured Event of Default, Trustor will not settle or compromise any claim in connection with such condemnation or other taking without Lender's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Nothing herein will be deemed to excuse Trustor from repairing, maintaining or restoring the Property as provided in this Security Instrument, regardless of the availability or sufficiency of any Condemnation Proceeds, unless Lender elects to have Condemnation Proceeds applied to payment of the Obligations, and the application or release by Lender of any Condemnation Proceeds will not cure or waive any Default, Event of Default or notice of Default or Event of Default or invalidate any action taken by or on behalf of Lender pursuant to any such notice. In the event of a foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the Condemnation Proceeds will vest in the purchaser at such foreclosure or in Lender or other transferee in the event of such other transfer of title.

Section 3.12 Availability of Net Proceeds.

(a) In the event of damage, destruction or other casualty to the Property or any part thereof that results in a loss of seventy-five percent (75%) or more of the full replacement value of the Property, as determined by Lender, all Net Proceeds received by Lender will be used to prepay the Obligations in accordance with the terms of the Loan Agreement and the Notes. Should the Net Proceeds exceed the amount of the Obligations due, any such excess will be repaid to Trustor. Should the Net Proceeds be less than the Obligations, any deficiency will be paid by Trustor to Lender within thirty (30) days of demand by Lender may commence suit to collect such

deficiency in accordance with Utah Code Annotated Section 57-1-32 or other applicable law. Lender's right to payment of Net Proceeds will exist whether or not any such loss results in any impairment to the security of the Lender under this Security Instrument.

(b) In the event of damage, destruction or other casualty to the Property or any part thereof that results in a loss of less than seventy-five percent (75%) of the full replacement value of the Property, as determined by Lender, Lender may, in its reasonable discretion, make the Net Proceeds received by Lender available to Trustor to pay the cost of reconstruction of the Property provided that no Default or Event of Default exists and any disbursements shall be under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. If any Net Proceeds remain available after completion of the reconstruction of the Property, then such Net Proceeds will be used to prepay the Obligations in accordance with the Loan Agreement and the Notes.

(c) The term "**Net Proceeds**" means (i) the net amount of the Insurance Proceeds received by Lender after deduction of Lender's costs and expenses (including reasonable attorneys' fees), if any, in collecting the same, or the net amount of the Condemnation Proceeds received by Lender after deduction of Lender's costs and expenses (including reasonable attorneys' fees), if any, in collecting the same, whichever the case may be; and (ii) any additional deposit the Lender requires the Trustor to make to the Lender in connection with such casualty or condemnation proceeding.

#### Article 4 - OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Trustor and Lender. The relationship between Trustor and Lender is solely that of debtor and creditor, and neither Lender nor any Lender has any fiduciary or other special relationship with Trustor, and no term or condition of any of the Loan Agreement, the Notes, this Security Instrument or any of the other Loan Documents will be construed so as to deem the relationship between Trustor and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The members and principals of Trustor are experienced in the ownership and operation of properties similar to the Property, and Trustee and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

#### Section 4.3 No Lender Obligations.

(a) Notwithstanding anything to the contrary contained in this Security Instrument, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents except as expressly described in the Loan Documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Notes or the other Loan Documents, including any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Lender nor any

Lender will be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof will not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Trustor recognizes and acknowledges that in accepting the Loan Agreement, the Notes, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement and this Security Instrument without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to the Lender in making the Loan and in entering into the Loan Agreement; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of such warranties and representations.

#### Article 5 - FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, Etc. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Trustor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Notes, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Trustor will, at Trustor's sole cost and expense, and without expense to Lender or Trustee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender may, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender and Trustee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Lender, or Trustee, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all applicable Laws and Governmental Requirements. Trustor, on demand, will execute and deliver, and in the event it fails to so execute and deliver, hereby authorizes Lender to execute in the name of Trustor or file or record without the signature of Trustor to the extent Lender may lawfully do so, one or more financing statements (including initial financing statements and amendments thereto and

continuation statements), to evidence more effectively the security interest of Lender in the Property. Trustor also ratifies its authorization for Lender to have filed or recorded any like initial financing statements, amendments thereto and continuation statements, if filed or recorded prior to the date of this Security Instrument. Such financing statements may contain a description of collateral broader than as set forth in this Security Instrument. Trustor grants to Lender and Trustee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender and Trustee at law and in equity, including such rights and remedies available to Lender and Trustee pursuant to this Section. To the extent not prohibited by applicable law, Trustor hereby ratifies all acts Lender and/or Trustee has lawfully done in the past or will lawfully do or cause to be done in the future by virtue of such power of attorney.

### Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Trustor will pay the tax, with interest and penalties thereon, if any, in accordance with the applicable provisions of the Loan Agreement. If Lender receives reasonable advice from competent counsel chosen by it that the payment of any such tax by Trustor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender will have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Subject to and in accordance with the terms of the Loan Agreement, Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction will otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction is be required by law, Lender will have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) Subject to and in accordance with the terms of the Loan Agreement, if at any time the United States of America, any State thereof or any subdivision of any such State will require revenue or other stamps to be affixed to the Notes, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

## Article 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Trustor acknowledges that Lender has examined and relied on the experience of Trustor and its members and principals in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Trustor's ownership of the Property as a means of maintaining the value of the Property as security for repayment and performance of the Obligations. Trustor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that after the occurrence and during

the continuance of an Event of Default, Lender can recover the Obligations by a sale of the Property pursuant to the terms and conditions set forth in the Loan Documents.

Section 6.2 No Transfer. Trustor shall not, without Lender's prior written consent, which consent may be withheld in Lender's sole and exclusive discretion, (a) sell, transfer, lease, convey or encumber the Land, the Equipment or the Improvements or the direct or indirect interests in Trustor, or (b) change control of Trustor, including by operation of law.

#### Article 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Subject to applicable law, upon the occurrence and during the continuance of any Event of Default, unless such Event of Default is subsequently cured by Trustor or waived in writing by Lender, Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) cause any or all of the Property to be sold under the power of sale granted by this Security Instrument in any manner permitted by Utah Code Annotated Section 57-1-24 or other applicable law and/or institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law; in either case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;

(c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Notes, the Loan Agreement or in the other Loan Documents;

(e) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(f) apply, on an ex parte basis, for the appointment of a receiver, trustee, liquidator or conservator of the Property pursuant to the Utah Uniform Commercial Real Estate Receivership Act, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Trustor, any guarantor or any indemnitor with respect to the Loan or of any Person liable for the payment of the Obligations. Such receiver and his agents will be empowered to take possession of the Property and perform all necessary or desirable acts with respect to management and operation of the Property;



(g) the license granted to Trustor under Section 1.2 hereof will automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Trustor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be physically occupied by Trustor; (vi) require Trustor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Lender deems appropriate in its sole discretion after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its attorneys, agents and employees;

(h) cause all or any portion of the Fixtures, the Equipment, and the Personal Property to be sold by Trustee under the power of sale granted by this Security Instrument; and exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) require Trustor at its expense to assemble the Fixtures, the Equipment and the Personal Property and make it available to Lender or Trustee at a convenient place acceptable to Lender or Trustee. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, will constitute commercially reasonable notice to Trustor;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole and absolute discretion of Lender:

- (i) Taxes;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Notes;

- (iv) The unpaid principal balance of the Notes;
- (v) All other sums payable pursuant to the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents, including advances made by Lender or Trustee pursuant to the terms of this Security Instrument;
- (j) Subject to applicable law, obtain a deficiency judgment if the net sales proceeds of any sale of the Property under the power of sale granted by this Security Instrument are insufficient to pay in full all of the Obligations;
- (k) Enforce all rights and remedies of an assignee of rents under the Act (as defined in Section 1.2);
- (l) pursue such other remedies as Lender may have under the other Loan Documents and/or applicable law; or
- (m) apply the undisbursed amount of any Insurance Proceeds and/or Condemnation Proceeds, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Lender deems to be appropriate in its discretion.

In addition to the foregoing, Lender may exercise any and all additional rights and remedies specified in the Loan Agreement.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument will continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Trustor acknowledges that the Lender has no obligation whatsoever to grant any waiver of any Event of Default and if any such waiver is agreed to, it, will be considered a one-time waiver.

**Section 7.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Notes, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion deems proper, to the extent consistent with applicable Laws.

**Section 7.3 Actions and Proceedings.** Trustor will give Lender prompt written notice of the assertion of any material claim with respect to, or the filing of any legal action or proceeding purporting to affect the Property, the security hereof or the rights or powers of Lender. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 7.4 Recovery of Sums Required to be Paid.** Subject to applicable law, upon the occurrence and during the continuance of an Event of Default, Lender will have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations is due, and without prejudice to the right of Lender thereafter to commence a non-judicial foreclosure or

bring an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced. In the event Trustor is curing a default or is paying off the Loan and Lender has incurred fees which Trustor is obligated to pay to Lender under any of the Loan Documents, and such amount has not been reduced to a final amount at the time Trustor is curing the default or is paying off the Loan, Lender may require Trustor to pay a reasonable estimate of such fees with the payment curing the default or with the payoff of the Loan, and any amount paid in excess of the estimate by the Trustor will be refunded to the Trustor after the final amount of such fee is determined. Upon determination of such final amount, Lender shall provide Trustor with invoices and other appropriate documentation supporting such final amount.

#### Section 7.5 Other Rights, Etc.

(a) The failure of Lender to insist upon strict performance of any term hereof will not be deemed to be a waiver of any term of this Security Instrument. Trustor will not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Trustor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Notes or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Trustor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain any insurance policies, or for failure to determine whether insurance in force is adequate as to the amount or nature of risks insured unless due to the gross negligence or willful misconduct of Lender, any Lender or their authorized agents. Possession by Lender will not be deemed an election of judicial relief if any such possession is requested or obtained with respect to all or any portion of the Property or collateral not in Lender's possession.

(c) Subject to applicable law, upon the occurrence and during the continuance of an Event of Default, Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument in accordance with Utah Code Annotated Section 57-1-23. The rights of Lender under this Security Instrument will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of Lender or Trustee will be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender and Trustee will not be limited exclusively to the rights and remedies herein stated but will be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.6 Right to Release any Portion of the Property. After the occurrence and during the continuance of an Event of Default or otherwise in accordance with the terms of the Loan Documents, Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder are reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by

assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument will continue as a lien on, and security interest in, the remaining portion of the Property.

Section 7.7 Violation of Laws. If the Property is not in compliance in all material respects with Governmental Requirements, Lender may in its reasonable discretion, impose additional requirements upon Trustor in connection herewith including reasonable monetary reserves or financial equivalents.

Section 7.8 Right of Entry. Upon reasonable notice to Trustor and subject to the rights of tenants under Leases affecting the Project, Lender and its agents will have the right to enter and inspect the Property at all reasonable times.

Section 7.9 Bankruptcy.

(a) After the occurrence and during the continuance of an Event of Default, Lender will have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there is filed by or against Trustor a petition under the Bankruptcy Code and Trustor, as lessor under any Lease, determines to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Trustor will give Lender not less than ten (10) days' prior notice of the date on which Trustor will apply to the bankruptcy court for authority to reject the Lease. Lender will have the right, but not the obligation, to serve upon Trustor within such ten (10) day period a notice stating that (i) Lender demands that Trustor assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Trustor the notice described in the preceding sentence, Trustor will not seek to reject the Lease and will comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice is given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 7.10 Acceptance of Payments. Trustor agrees that if Trustor makes a tender of a payment but does not simultaneously tender payment of any late charge, Default Rate interest, or other amount then due and owing by Trustor under this Security Instrument or the other Loan Documents, and such payment is accepted by Lender, with or without protest, such acceptance will not constitute any waiver of Lender's or such Lender's rights to receive such amounts. Furthermore, if Lender accepts any payment from Trustor or any Guarantor after a Default or Event of Default, such acceptance will not constitute a waiver or satisfaction of any such Default or Event of Default.

Section 7.11 Exercise of Power of Sale. For any sale under the power of sale granted by this Security Instrument, Lender or Trustee will record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon

any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale in accordance with applicable law. If the Property includes several lots or parcels, Lender 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. To the extent any of the Property sold by the Trustee is personal property, then Trustee will be acting as the agent of Lender in selling such Property. 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 will be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

#### Article 8 - CERTAIN WAIVERS

Section 8.1 Waiver of Offsets; Defenses; Counterclaim. Trustor hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender and/or any Lender to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations hereunder will be a valid defense to, or result in any offset against, any payments which Trustor is obligated to make under any of the Loan Documents.

Section 8.2 Marshalling and Other Matters. To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption Laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, and to the fullest extent permitted by applicable law, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Trustor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all other Persons to the extent permitted by applicable law.

Section 8.3 Waiver of Notice. To the extent permitted by applicable law, Trustor will not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or any of the other Loan Documents specifically and expressly provides for the giving of notice by Lender to Trustor and except with respect to matters for which Lender is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Trustor. All sums payable by Trustor pursuant to this Security Instrument must be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder will in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (b) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating

to Lender, or any action taken with respect to this Security Instrument by any trustee or receiver of Lender, or by any court, in any such proceeding; (e) any claim which Trustor has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor has notice or knowledge of any of the foregoing.

Section 8.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

#### Article 9 - NOTICES

Trustor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Security Instrument in the manner required by applicable law. All notices or other written communications hereunder will be delivered in accordance with the notice provisions of the Loan Agreement.

#### Article 10 - APPLICABLE LAW

Section 10.1 GOVERNING LAW; WAIVER OF JURY TRIAL; JURISDICTION. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, AND ANY LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO NATIONAL BANKS.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF UTAH OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS SECURITY INSTRUMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF UTAH, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT

BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN WILL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES DESCRIBED IN THIS SECURITY INSTRUMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE WILL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN WILL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

Section 10.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof will be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term will not be affected thereby.

#### Article 11 - DEFINITIONS

All capitalized terms not defined herein will have the respective meanings set forth in the Loan Agreement. If a capitalized term is defined herein and the same capitalized term is defined in the Loan Agreement, then the capitalized term that is defined herein will be utilized for the purposes of this Security Instrument, *provided* that the foregoing will not impact provisions that are incorporated herein by reference. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Trustor**" will mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein, without limitation or waiver of any restrictions on transfers of any interests therein as set forth in any Loan Document" the word "**Lender**" will mean "Lender and any subsequent Lender with respect to the Loan," the word "**Trustee**" means "the Trustee herein named and any successor Trustee," the word "**Property**" will include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" will include any and all reasonable attorneys', paralegals' and law clerks' fees and disbursements, including reasonable fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender and/or any Lender and/or Trustee in protecting its respective interest in the Property, the Leases and the Rents and enforcing its respective rights hereunder.

#### Article 12 - MISCELLANEOUS PROVISIONS

Section 12.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor, Lender, or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 12.2 Successors and Assigns. This Security Instrument will be binding upon and inure to the benefit of Trustor and Lender and their respective successors and assigns forever.

Section 12.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Notes or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Notes and this Security Instrument will be construed without such provision.

Section 12.4 Headings, Etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 12.5 Subrogation. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender will be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, the performance and discharge of Trustor's obligations hereunder, under the Loan Agreement, the Notes and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 12.6 Entire Agreement. The Notes, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Trustor and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Trustor and Lender with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 12.7 Limitation on Lender's Responsibility. No provision of this Security Instrument will operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor will it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained will be construed as constituting Lender a "mortgagee in possession."

Section 12.8 Lender's Discretion. Whenever, pursuant to this Security Instrument or any of the other Loan Documents, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable to Lender, or Lender exercises any right to grant or withhold consent, or Lender exercises its discretion in making any decision, the decision



of Lender will, except as is otherwise specifically herein provided, be in the sole and absolute discretion of Lender and will be final and conclusive.

Section 12.9 No Merger. So long as the Obligations owed to Lender secured hereby remain unpaid and undischarged and unless Lender otherwise consents in writing, the fee, leasehold, subleasehold and sub-subleasehold estates in and to the Property will not merge but will always remain separate and distinct, notwithstanding the union of estates (without implying Trustor's consent to such union) either in Trustor, Lender, any tenant or any third party by purchase or otherwise. In the event this Security Instrument is originally placed on a leasehold estate and Trustor later obtains fee title to the Property, such fee title will be subject and subordinate to this Security Instrument.

### Article 13 - STATE-SPECIFIC PROVISIONS

Section 13.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 13 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 13 will control and be binding.

Section 13.2 NonAgricultural Use; Commercial Loan. Trustor represents, warrants, and covenants to Lender that (a) the Property is not, and will not be, used principally for agricultural purposes, and (b) the Loan is made exclusively for commercial, investment, or business purposes and no portion thereof will be used for any consumer, personal, family or household purpose. For purposes of Utah Code Annotated Section 57-1-25 and Utah Code Annotated Section 78B-6-901.5, Trustor agrees that the stated purpose for which this Security Instrument was given is not to finance residential rental property

Section 13.3 Expenses During Redemption Period. If this Security Instrument is foreclosed as a mortgage and the Property 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 lesser of the Default Rate or the maximum rate permitted by law, will be added to and become a part of the amount required to be paid for redemption from such sale.

Section 13.4 Foreclosure Subject to Tenancies. Lender will have the right at its option to foreclose, or cause the nonjudicial foreclosure of, this Security Instrument subject to the rights of any tenant or tenants of the Property.

Section 13.5 Lender's and Trustee's Expenses. Trustor will pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Security Instrument, whether or not any suit is filed, including, without limitation, legal fees and disbursements, foreclosure costs, title charges, and expenses incurred in any bankruptcy, reorganization, liquidation, receivership or similar proceeding. All such sums, with interest thereon, will be additional indebtedness of Trustor secured by this Security Instrument. Such sums will be immediately due and payable and will bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

Section 13.6 Successor Trustee. In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

Section 13.7 Lender's Powers. Without affecting the liability of any person for payment or performance of the Obligations or any of Lender's rights or remedies, Lender, at its option, may extend the time for payment of the Obligations or any part thereof, reduce payment thereon, release anyone liable thereon, accept a renewal note or notes therefor, modify the terms and time of payment thereof, release the lien of this Security Instrument 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, or consent and/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 creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Security Instrument or the lien or charge hereof. Trustor will pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Trustor's request.

Section 13.8 Subdivision. Trustor hereby consents to a subdivision of the Property, if Lender, in its sole discretion, determines that a subdivision of the Property is necessary or desirable to preserve the lien of this Security Instrument, or to permit Lender to foreclose on only a portion of the Property.

Section 13.9 Agents. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee.

Section 13.10 Protection of Lender's Security. Trustor will give notice to Lender of and will appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Loan Documents. If any such action or proceeding is commenced and there is an uncured Event of Default, or Trustor fails to perform any of the Obligations, Lender or Trustee may, at their option, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the property, make any entries upon the Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Security Instrument, (ii) remedy Trustor's failure to perform the Obligations (without waiving such default by Trustor), or (iii) otherwise protect Lender's or Trustee's interests. Trustor will pay all losses, damages, fees, costs and expenses incurred by Lender and Trustee in taking such actions; including, without limitation, reasonable legal fees.

Section 13.11 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender and Trustee pursuant to Section 13.5 and Section 13.10 or any other provision of this Security Instrument or the other Loan Documents, with interest thereon at the Default Rate from the date of disbursement until repaid, will constitute Obligations secured by this Security Instrument. All such amounts will be immediately due and payable and bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

Section 13.12 Additional Waivers.

(a) Trustor waives to the extent permitted by law all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights and remedies of sureties.

(b) With respect to the Property, notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Annotated Section 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated Section 57-1-32 and any successor or replacement statute or any similar laws or benefits.

Section 13.13 Foreclosure by Power of Sale. After the lapse of such time as may then be required by Utah Code Annotated Section 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Annotated Section 57-1-25 and Section 57-1-26 or other applicable law, Trustee, without demand on Trustor, will sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to Trustor's statutory right under Utah Code Annotated Section 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, will be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it is completed and, in every such case, notice of postponement will be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale will be given in the same manner as the original notice of sale as required by Utah Code Annotated Section 57-1-27. Trustee will execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Annotated Section 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee will apply the proceeds of the sale as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the obligations secured by the trust deed.

THIRD: The balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Annotated Section 57-1-29.

Upon any sale made under or by virtue of this Section 13.13, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with Utah Code Annotated Section 57-1-28(1)(b). In the event of a successful credit bid, Lender may make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Security Instrument such credit bid amount. Lender, upon so acquiring the Property or any part thereof, will be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

Section 13.14 Certain Matters Pertaining to Utah Law. With respect to the Property which is located in the State of Utah, notwithstanding anything contained herein to the contrary:

(a) Utah State Construction Registry.

(i) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor shall cause Lender to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Annotated Section 38-1a-201. Trustor shall also provide to Lender copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

(ii) Trustor represents and warrants to Lender that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Lender by Trustor in writing or for which the Title Company has provided affirmative coverage acceptable to Lender pursuant to the Title Policy. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

(iii) If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Trustor will provide Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Annotated Section 38-1a-503(2)(b) such that the priority for any pre-construction lien or a construction lien dates immediately after the recording of this Security Instrument.

(iv) Trustor shall cooperate with Lender and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Annotated Section 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Lender's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the County in which the Property is located.

(v) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Lender's title insurer to insure in a manner acceptable to Lender in its sole discretion, that this Security Instrument shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Lender, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

(vi) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Encumbrances), or any part thereof or interest therein whether inferior or superior to this Security Instrument and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated Section 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated Section 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated Section 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Lender) for any such lien or claim, as determined in Lender's sole discretion.

(vii) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Annotated Section 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the Default Rate.

(b) For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Notes, Security Instrument, and other documents evidencing or executed in connection with the debt set forth in the Notes shall constitute a part of

and be entitled to the benefits of Lender's Security Instrument lien upon the Property and Lender may add all such amounts to the principal balance to the principal balance of the Notes, in its sole discretion, and Lender may include such amounts in any credit which Lender may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument.

(c) Nothing in this Security Instrument dealing with foreclosure procedures or specifying particular actions to be taken by Lender or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah Code Annotated Title 57, and any such inconsistency shall be resolved in favor of Utah Code Annotated Title 57. In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Security Instrument, this Security Instrument shall, at the sole election of Lender, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(d) Section 1.2 of this Security Instrument is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Security Instrument and the provisions of the Act, the provisions of the Act shall control.

(e) This Security Instrument secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" under Utah Code Annotated Section 70A-9a-334(8).

(f) Lender hereby requests, pursuant to Utah Annotated Code Section 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder and under any other deed of trust affecting the Property now or at any time in the future be mailed to it at the address set forth in the preamble to this Security Instrument.

(g) Any references herein to the Utah Code Annotated shall be deemed to be a reference to the current version of such statutes together with any successor or replacement statute or law therefor.

(h) If a leasehold estate constitutes any portion of the Property, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Lender, which consent may be withheld by Lender in its absolute and sole discretion. Consent to one amendment, modification, extension or renewal will not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to perform all obligations and agreements under said leasehold and will not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Lender in writing with respect to any default or alleged default by any party thereto and to deliver to Lender copies of all notices, demands, complaints or other communications received or given by Trustor with respect to any such default or alleged default. Lender will have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Lender in curing any such default

will be secured hereby and will be immediately due and payable without demand or notice and will bear interest from date of expenditure at the Default Rate.

(i) It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Uniform Commercial Code, Lender, upon an Event of Default, may proceed under the Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Annotated Section 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Annotated Section 57-1-30 or other applicable law.

(j) If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan with three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated Section 57-1-31(1), such party will pay to Lender the reasonable cancellation fee contemplated by Utah Code Annotated Section 57-1-31(2), as delivered by Lender, in accordance with its then current policies and procedures, whereupon Trustee will record a notice of cancellation of the pending sale.

(k) Lender may accept a cure of an Event of Default from time to time in its discretion but without any obligation whatsoever to do so. Trustor will only be entitled to rely on such an acceptance if Lender expressly states, in writing, that it has accepted such a cure. If Lender accepts a cure of an Event of Default, and no other uncured Event of Default is then continuing, then Lender may agree in its discretion, but without any obligation to do so, to treat any provision in this Security Instrument or in any other Loan Document as if no Event of Default had ever occurred.

(l) Trustor hereby irrevocably authorizes Lender at any time and from time to time to file or record in any filing office in any Uniform Commercial Code jurisdiction, or in any county recorder's office or other public office for recording of public land records, any initial financing statements and amendments thereto that (a) indicate the Personal Property: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Personal Property as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Personal Property relates. Trustor agrees to furnish any such information to Lender promptly upon request. Trustor also ratifies its authorization for Lender to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Lender is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with

respect to any financing statement without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender, subject to Trustor's rights under Section 9-509(4)(b) of the Utah Uniform Commercial Code. Trustor will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Lender to be necessary or desirable. Trustor represents and warrants that Trustor is organized under the laws of the State of Delaware, which is the location of Trustor under the applicable Uniform Commercial Code. Lender, as Secured Party, has or will file a financing statement naming Trustor, as Debtor, in the Delaware Division of Corporations relating to assets of Trustor, as Debtor, including the Personal Property.

(m) PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS SECURITY INSTRUMENT, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

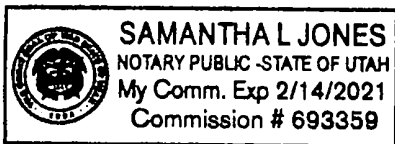
IN WITNESS WHEREOF, THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING has been executed by Trustor as of the day and year first above written.

**MILLCREEK COVE APARTMENTS, LLC**  
a Utah limited liability company

By: [Signature]  
Name: COVEY JONES  
Its: MANAGER/OWNER

STATE OF UTAH )  
 )  
 ) :SS.  
 )  
COUNTY OF Salt Lake )

This instrument was acknowledged before me this 16 day of May, 2018, by Covey Jones, the manager/owner of Millcreek Cove Apartments, LLC.



[Signature]  
NOTARY SIGNATURE  
Residing at: 1063 E 12200 S Propper UT 84020  
My Commission Expires: 2/14/2021



**EXHIBIT A**

**LEGAL DESCRIPTION**

That certain real property located in Salt Lake County, Utah, and more particularly described as follows:

Beginning South 00°01'11" West 574.15 feet from the Northwest corner of Lot 9, Block 7, of 10 Acre Plat A, Big Field Sur; thence North 00°01'11" East 105 feet; thence South 89°57'16" East 379.38 feet; thence South 00°10'31" West 105 feet; thence South 89°58'00" 123.64 feet; thence South 00°30'42" West 55.90 feet; thence North 89°59'46" West 22 feet; thence South 00°00'14" West 1.5 feet; thence North 89°59'46" West 232.99 feet; thence North 00°01'11" East 57.75 feet to the point of beginning. Containing approximately 1.25 acres more or less.