

12984426
5/8/2019 4:41:00 PM \$36.00
Book - 10778 Pg - 6773-6784
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 12 P.

Tax Serial Number:
28-29-377-020

RECORDATION REQUESTED BY:
STEARNS BANK NATIONAL ASSOCIATION
ST CLOUD OFFICE
4191 SO 2ND ST
PO BOX 7338
ST CLOUD, MN 56302

WHEN RECORDED MAIL TO:
STEARNS BANK NATIONAL ASSOCIATION
ST CLOUD OFFICE
4191 SO 2ND ST
PO BOX 7338
ST CLOUD, MN 56302

SEND TAX NOTICES TO:
JF PEAK PARTNERS, LLC
1148 W LEGACY CROSSING BLVD #400
CENTERVILLE, UT 84017

109748 CAF

FOR RECORDER'S USE ONLY

CONSTRUCTION DEED OF TRUST

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$7,360,000.00.

THIS DEED OF TRUST is dated May 1, 2019, among LANDING POINT APARTMENTS, L.C., whose address is 3101 South Bountiful Boulevard, Bountiful, UT 84010; a UTAH LIMITED LIABILITY COMPANY ("Trustor"); STEARNS BANK NATIONAL ASSOCIATION, whose address is ST CLOUD OFFICE, 4191 SO 2ND ST, PO BOX 7338, ST CLOUD, MN 56302 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and COTTONWOOD TITLE INSURANCE AGENCY, INC., whose address is 1996 E 6400 S SUITE 120, SALT LAKE CITY, UT 84121 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, Improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SALT LAKE County, State of Utah:

See EXHIBIT A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 12553 SOUTH FORT STREET, DRAPER, UT 84020.
The Real Property tax identification number is 28-29-377-020.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Trustor to Lender, or any one or more of them, as well as all claims by Lender against Trustor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS BY BORROWER AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF BORROWER'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN BORROWER

AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all amounts secured by this Deed of Trust as they become due, shall strictly and in a timely manner perform all of Trustor's obligations under this Deed of Trust, and Borrower shall strictly and in a timely manner perform all of Borrower's obligations under the Note and the Related Documents.

Notwithstanding anything to the contrary herein, by accepting this Deed of Trust, Lender acknowledges that Trustor's obligations hereunder are limited to the pledge and encumbrance of Trustor's interest in the Property as security for the Indebtedness, and that the performance of all monetary obligations under the Note, this Deed of Trust, or the Related Documents, or any other obligations based upon occupancy of the Property, are the sole obligation of Borrower and any obligors. Without limiting the generality of the foregoing, Lender acknowledges that Borrower is in sole possession of the Property pursuant to the Ground Lease referenced below, and pursuant to the terms of the Ground Lease, Borrower is obligated to pay and perform all obligations to pay property taxes and assessments, provide insurance, maintain the Property, which would otherwise be obligations of Trustor under this Deed of Trust.

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Utah.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 57-1-19, et seq.

Duty to Maintain. Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance with Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans with Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction Loan. If some or all of the proceeds of the loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Note (or such earlier date as

Lender may reasonably establish) and Trustor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipts, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any restructuring of the legal entity (whether by merger, division or otherwise) or any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor.

GROUND LEASE. Trustor and Borrower have entered into a certain Ground Lease dated on or about the date hereof (the "**Ground Lease**") in connection with obtaining the Indebtedness. In order to induce Lender to provide the Indebtedness to Borrower and for Borrower to enter into the Ground Lease with Trustor, Trustor has agreed to enter into this Trust Deed. Trustor agrees that Trustor will receive direct and indirect benefit from Borrower's obtaining the Indebtedness from Lender, including, without limitation the execution of the Ground Lease by Borrower and the construction of Improvements funded by Borrower and the Indebtedness.

With respect to this Deed of Trust, Trustor waives the provisions of Sections 6.1 through 6.5 of the Ground Lease.

In addition, the Trustor agrees to the following regarding the Ground Lease:

Compliance with Terms of Ground Lease. Trustor shall (i) promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the landlord under the Ground Lease and do all things necessary to preserve and to keep unimpaired its rights thereunder, (ii) promptly notify Lender of any default by Borrower under the Ground Lease in the performance of any of the terms, covenants or conditions on the part of Borrower to be performed or observed thereunder or of the giving of any notice by the Borrower to Trustor of the Borrower's intention to end the term thereof, and (iii) promptly cause a copy of each such notice given by the Borrower to Trustor to be delivered to Lender.

Notices Under Ground Lease. Trustor shall deliver to Lender, (A) within five days after Trustor's receipt, a true and correct copy of each notice, demand, complaint or request from the Borrower under the Ground Lease, under, or with respect to, the Ground Lease and (B) promptly after delivery by Trustor, a true and correct copy of each notice, demand, complaint or request from Trustor, as landlord, under, or with respect to, the Ground Lease.

Lender May Cure. If Trustor shall fail promptly to perform or observe any of the terms, covenants or conditions required to be performed by it under the Ground Lease, Lender may take such action as is appropriate to cause such terms, covenants or conditions to be promptly performed or observed on behalf of Trustor but no such action by Lender shall release Trustor from any default under this Deed of Trust or any other Related Document. Upon receipt by Lender from the Borrower or Trustor of any notice of default by Trustor under the Ground Lease, Lender may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Trustor or by any party on behalf of Trustor.

Covenants to Protect the Leasehold Estate Pursuant to the Ground Lease. Trustor shall not, without the written consent of Lender (which may be given or withheld by Lender in its sole and absolute discretion), (i) accept the surrender of the leasehold interest or any other interest under the Ground Lease or terminate or cancel the Ground Lease, (ii) amend, modify or change the Ground Lease, either orally or in writing, or waive any of Trustor's rights under the Ground Lease, (iii) subordinate the Ground Lease or any interest of Trustor pursuant to the Ground Lease to any mortgage, deed of trust, or other lien, or (iv) reject or assume the Ground Lease or assign the leasehold estate pursuant to the Ground Lease pursuant to Section 365(h) of the Bankruptcy Code. Trustor absolutely and unconditionally transfers and assigns to Lender all of Trustor's rights to accept the surrender of, terminate, cancel, modify and change the Ground Lease, and any such acceptance of surrender, termination, cancellation, modification or change made without prior written consent of Lender shall be void and have no legal affect.

Bankruptcy Provisions.

(1) Trustor assigns to Lender, as additional security for the Indebtedness, Trustor's right to reject the Ground Lease under Section 365 of the Bankruptcy Code after the occurrence of an Event of Trustor Bankruptcy. As used herein an "Event of Trustor Bankruptcy" means either of the following actions taken by or with respect to Trustor: (i) Trustor pursuant to or within the meaning of the Bankruptcy Code (x) commences a voluntary case, or (y) consents to the entry of an order for relief against it in an involuntary case; or (ii) a court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Trustor in an involuntary case.

(2) If, after the occurrence of an Event of Trustor Bankruptcy, Trustor decides to reject the Ground Lease, Trustor shall give Lender written notice, at least 10 days in advance, of the date on which Trustor intends to apply to the Bankruptcy Court for authority and permission to reject the Ground Lease. Lender shall have the right, but not the obligation, within 10 days after receipt of Trustor's notice, to deliver to Trustor a notice ("Lender's Assumption Notice") in which (i) Lender demands that Trustor assume the Ground Lease and assign the Ground Lease to Lender or its designee, in accordance with the Bankruptcy Code, and (ii) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lease defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease. If Lender

timely delivers Lender's Assumption Notice to Trustor, Trustor shall not reject the Ground Lease and shall, within 15 days after receipt of Lender's Assumption Notice, comply with the demand contained in clause (i) of Lender's Assumption Notice. If Lender does not timely deliver Lender's Assumption Notice to Trustor, Trustor shall have the right to reject the Ground Lease.

(3) If, after the occurrence of an Event of Borrower Bankruptcy, the Borrower rejects the Ground Lease pursuant to Section 365 of the Bankruptcy Code (i) Trustor immediately after obtaining notice of the rejection, shall deliver a copy of the notice to Lender, (ii) Trustor shall not without Lender's prior written consent, which may be given or withheld in Lender's sole and absolute discretion, elect to treat the Ground Lease as terminated pursuant to Section 365 or any other applicable provision of the Bankruptcy Code, and (iii) this Deed of Trust and the lien created by this Deed of Trust shall extend to and encumber Trustor's retained rights under the Ground Lease that are appurtenant to the Real Property for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease. Trustor transfers and assigns to Lender, as additional security for the Obligations, Trustor's rights, after Borrower's rejection of the Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Trustor without Lender's prior written consent shall be void and have no legal effect. As used herein, an "Event of Borrower's Bankruptcy" means either of the following actions taken with respect to the Borrower (i) the Borrower, pursuant to or within the meaning of the Bankruptcy Code (x) commences a voluntary case, or (y) consents to the entry of an order for relief against it in an involuntary case; or (ii) a court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Borrower in an involuntary case

(4) Trustor transfers and assigns to Lender, as additional security for the Indebtedness, all of Trustor's rights to damages caused by Borrower's rejection of the Ground Lease after the occurrence of an Event of Borrower Bankruptcy and all of Trustor's rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Trustor to exercise such rights with Lender's prior written consent.

No Release from Deed of Trust. No release or forbearance of any of Trustor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Trustor from any of its obligations under this Deed of Trust or any other Related Document.

Performance by Borrower. Trustor shall enforce the obligations of the Borrower under the Ground Lease to the end that Trustor may enjoy all of the rights granted to it under the Ground Lease, and will promptly notify Lender of any default by the Borrower, or by Trustor as landlord, in the performance or observance of any of the terms, covenants and conditions on the part of the Borrower or Trustor, as the case may be, to be performed or observed under the Ground Lease. Trustor will promptly advise Lender of the occurrence of any of the events of default enumerated in the Ground Lease and of the giving of any notice by the Borrower to Trustor of any default by Trustor, as such landlord, in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Trustor to be performed or observed and will deliver to Lender a true copy of each such notice. If, pursuant to the Ground Lease, the Borrower shall deliver to Lender a copy of any notice of default given to Trustor, as landlord under the Ground Lease, such notice shall constitute full authority and protection to Lender for any action taken or omitted to be taken by Lender with respect to any default referred to in any such copy of notice of default delivered to Lender.

Appointment of Lender as an Attorney-in-Fact. Trustor makes, constitutes and appointments Lender as Trustor's attorney-in-fact in Trustor's name, place and stead with full power of substitution for the limited purpose of taking all actions and signing all documents and instruments which Lender, in its sole and absolute discretion, considers to be necessary or desirable to (i) prevent or cure a default under the Ground Lease, (ii) perform or carry out any of the Trustor's covenants under the Ground Lease, (iii) appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease, if provided in the Ground Lease, and (iv) request and obtain estoppel certificates or other assurances from Borrower pursuant to the Ground Lease. Trustor gives and grants to Lender, as Trustor's attorney-in-fact for the foregoing purpose, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing powers as fully as Trustor might or could do, and Trustor hereby ratifies and confirms all acts that Lender as Trustor's attorney-in-fact shall lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, shall be irrevocable as long as any of the Indebtedness remains unpaid.

Certificate from the Borrower. Trustor shall use commercially reasonable efforts to obtain from the Borrower and deliver to Lender, within 20 days after demand from Lender, a statement in writing certifying that the Ground Lease is unmodified and in full force and effect and the dates to which the rent and other charges, if any, have been paid in advance, and stating whether or not, to the best knowledge of the signer of such certificate, Trustor is in default in the performance of any covenant, agreement or condition contained in the Ground Lease, and, if so, specifying each such default of which the signer may have knowledge.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Borrower shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Borrower may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Borrower shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Borrower has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Borrower shall defend itself, Trustor and Lender and shall satisfy any adverse judgment before enforcement against the Property. Borrower shall name Lender and Trustor as additional obligees under any surety bond furnished in the contest proceedings.

Evidence of Payment. Borrower and Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Borrower shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Borrower will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Borrower can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Borrower shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Borrower shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustor and Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Borrower shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower, Trustor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Borrower and Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Lender may make proof of loss if Borrower and Trustor fail to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Borrower and Trustor are not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Borrower's Report on Insurance. Upon request of Lender, however not more than once a year, Borrower shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Borrower shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Borrower or Trustor fail to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than the Ground Lease and those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance with Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Borrower and Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Borrower shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under this Deed of Trust, and the Borrower's obligations under the Note and Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Borrower shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays or causes Borrower to pay all the Indebtedness when due and Trustor otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Trustor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Other Defaults. Borrower or Trustor fail to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and

Borrower.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust.

Default on Other Payments. Failure of Borrower within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Borrower default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or Trustor's property or Borrower's ability to perform Borrower's obligations under this Deed of Trust.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or by Borrower in the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Trustor's existence as a going business or the death of any member, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Notes or Related Documents. An "Event of Default" occurs under the Note or any other Related Document (as that term is defined in the Note or any other Related Document).

Ground Lease. If any default occurs under the Ground Lease.

Right to Cure. If any default, other than a default in payment, is curable and if Borrower has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Trustor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Trustor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Trustor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

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

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of SALT LAKE County, State of Utah. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust or required by law, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered in accordance with the law or with this Deed of Trust, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all notices given under Utah Code Ann. Section 57-1-26 shall be given as required therein. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided by applicable law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

COUNTERPART SIGNATURES. THIS DOCUMENT MAY BE SIGNED IN ANY NUMBER OF COUNTERPARTS ALL OF WHICH COMBINED SHALL BE CONSIDERED ONE AND THE SAME DOCUMENT.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing

and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. Borrower shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Borrower's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

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

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Deed of Trust will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Utah. In all other respects, this Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Minnesota without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Deed of Trust is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Deed of Trust has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Minnesota.

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

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

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

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all Indebtedness secured by this Deed of Trust.

Future Advances. In addition to the Indebtedness, this Deed of Trust secures all future advances made by Lender to Borrower, whether or not the advances are made pursuant to a commitment by Lender. Specifically, without limitation, this Deed of Trust secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may advance to preserve, protect, or improve the Property or to pay expenses related to the Property, together with interest or other fees thereon.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means STEARNS BANK NATIONAL ASSOCIATION, and its successors and assigns.

Borrower. The word "Borrower" means JF PEAK PARTNERS, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

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

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Borrower's or Trustor's obligations or expenses incurred by Trustee or Lender to enforce Borrower's or Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means STEARNS BANK NATIONAL ASSOCIATION, its successors and assigns.

Note. The word "Note" means Promissory Note from Borrower to Lender in the original principal amount of \$7,360,000.00 dated May 1, 2019, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement. The maturity date of this Deed of Trust is May 1, 2021. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness together with all renewals of, extensions of, modifications of, consolidations of and substitutions thereof or thereto; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means COTTONWOOD TITLE INSURANCE AGENCY, INC., whose address is 1996 E 6400 S SUITE 120, SALT LAKE CITY, UT 84121 and any substitute or successor trustees.

Trustor. The word "Trustor" means LANDING POINT APARTMENTS, L.C., a Utah limited liability company.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:



LANDING POINT APARTMENTS, L.C., a Utah limited liability company

By: [Signature]
Name: David L. Phillips
Title: Manager

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)

COUNTY OF DAVIS)

) SS
)

On this 2nd day of MAY, 2019, before me, the undersigned Notary Public, personally appeared **David L. Phillips, the Manager of LANDING POINT APARTMENTS, L.C., a Utah limited liability company**, and known to me to be the sole Manager of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By [Signature]
Notary Public in and for the State of UTAH

Residing at Davis County, Utah
My commission expires 4.25.20

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

EXHIBIT A

Beginning at a point on a fence line and the West line of the CAROL LEE SUBDIVISION, said point also being North 89°59'55" West along the section line 114.18 feet and North 104.41 feet from the South quarter corner of Section 29, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence North 89°18'54" West along said fence line and the extension thereof 318.88 feet to a point on the East right of way of South Fort Street; thence North 05°39'57.8" East along said right of way 226.61 feet; thence North 86°00'34.1" East 182.29 feet; thence North 00°58'42.0" West for a distance of 27.8750 feet; thence North 50°14'50.5" East 3.36 feet; thence North 00°00'00.0" East 9.12 feet; thence North 72°27'49" East for a distance of 118.01 feet to a point on the West line of said subdivision; thence South 0°00'00.0" West along the West line of said subdivision 316.70 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

That portion conveyed to Draper City, a municipal corporation by Deed of Dedication and Acceptance recorded January 22, 2019 as Entry No. 12922257 in Book 10747 at Page 3176 and described as follows: Beginning at a point on a fence line, said point also being North 89°59'55" West along the section line 422.84 feet and North 108.096 feet from the South quarter corner of Section 29, Township 3 South, Range 1 East, Salt Lake Base and Meridian; thence North 89°18'54" West for a distance of 10.19 feet to a point on a line; thence North 05°39'58" East for a distance of 226.61 feet to a point on a line; thence North 86°00'34" East for a distance of 10.16 feet to a point on a line; thence South 05°37'53" West for a distance of 227.43 feet to the point of beginning.

Described by the Salt Lake County Recorder as follows:

Commencing North 04° East 78.5 feet from the Southwest corner of Block 10A, Draperville and running thence North 04° East 198 feet; thence North 75°45' East 296.58 feet; thence South 270.51 feet; thence West 301.22 feet to the point of beginning.

ALSO: Beginning at a point on the East line of Fort Street and the East line of Block 10A, Draperville, said point being South 04°30'22" West along said East line (as determined from street improvements) 575.881 feet from the Northwest corner of said Block 10A, said Northwest corner being North 89°29'38" West along the 12400 South Street monument line 47.018 feet and South 00°32'22" West 41.25 feet from a Salt Lake County monument line in the intersection of said 12400 South Street and 980 East Street; thence North 85°21'56" East 86.87 feet; thence South 68°11'22" West 95.684 feet to said East line of Fort Street; thence North 04°30'22" East along said East line 28.62 feet to the point of beginning.

ALSO LESS AND EXCEPTING THEREFROM the following:

Beginning at a point on the East line of Fort Street and the East line of Block 10A, Draperville, said point being South 04°30'22" West along said East line (as determined from street improvements) 575.881 feet and North 85°21'56" East along the 12400 South Street monument line 86.87 feet from the Northwest corner of said Block 10A, Draperville; thence North 68°11'22" East 94.20 feet; thence South 00°58'42" East 27.875 feet; thence South 85°21'56" West 88.221 feet to the point of beginning.

TOGETHER WITH that portion of the vacated street on the West.