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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 27 P.

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Cable Huston LLP  
1455 SW Fifth Avenue, Suite 1500  
Portland, OR 97201  
Attention: Gretchen S. Barnes

NCS-991180-a

Tax Parcel ID Nos. 14-14-226-001-000

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

**LANDMARK 14 LLC**, a Utah limited liability company,  
Borrower,  
having an address 1505 S. Redwood Road, Salt Lake City, Utah 84130

**FIRST AMERICAN TITLE INSURANCE COMPANY,**  
Trustee

for the benefit of

**JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation,  
Lender,  
having an office at 225 W. Wacker Drive, Suite 1200, Chicago, Illinois 60606

Loan Amount: \$38,000,000  
Premises: 5600 West California Avenue, Salt Lake City, Utah 84104  
PPM Loan No. 1905101

**THIS SECURITY INSTRUMENT CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN ON SUCH PROPERTY CREATED HEREBY, LENDER IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR."**

**DEED OF TRUST, SECURITY AGREEMENT  
AND FIXTURE FILING**

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is executed on the date set forth in the acknowledgment(s) below to be effective as of the 13<sup>th</sup> day of January, 2020, by **LANDMARK 14 LLC**, a Utah limited liability company ("Borrower"), as trustor, to **FIRST AMERICAN TITLE INSURANCE COMPANY** ("Trustee"), as trustee, for the benefit of **JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation ("Lender"), as beneficiary.

**TERMS:** The following terms or provisions are used in this Security Instrument, and are incorporated by reference herein.

Borrower's Mailing Address:           Landmark 14 LLC  
  1505 S. Redwood Road  
  Lake City, Utah 84130

Lender's Mailing Address:   Jackson National Life Insurance Company  
  225 W. Wacker Drive, Suite 1200  
  Chicago, Illinois 60606

Trustee's Mailing Address:   First American Title Insurance Company  
  215 South State Street, Suite 380  
  Salt Lake City, Utah 84111

Note (selected terms):

Date:	Of even date herewith
Original principal amount:	\$38,000,000.00
Maker:	Borrower
Noteholder:	Lender
Maturity Date:	February 1, 2035

**1.    CONVEYANCE AND SECURED OBLIGATIONS.**

**1.1    Conveyance.** For purposes of securing payment and performance of the Secured Obligations defined and described in Section 1.2 of this Security Instrument, Borrower has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, with power of sale and right of entry and possession, the Project (hereafter defined), subject, however, to the liens, easements, restrictions, security interests and other title matters (if any) as reflected on the loan policy of title insurance accepted by Lender with respect to this Security Instrument (the "Permitted

Exceptions”), all estate, right, title and interest which Borrower now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the “Project”):

(i) the real property more particularly described in Exhibit A attached hereto, together with all existing and future easements and rights affording access to it (the “Land”);

(ii) all buildings, structures and improvements now located or later to be constructed on the Land (the “Improvements”);

(iii) all existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements;

(iv) all existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions (including all “Leases,” as defined in the Assignment of Rents described in Section 2 herein, executed and delivered to Lender contemporaneously herewith) relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

(v) all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Security Instrument;

(vi) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements;

(vii) all of Borrower's interest in and to the Loan funds, whether disbursed or not, the Escrow Accounts (as defined in Section 3.1 of the Loan Agreement) and any of Borrower's funds now or later to be held by or on behalf of Lender;

(viii) all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now

or later to be received from third parties (including all earnest money sales deposits) or deposited by Borrower with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes and drafts (whether tangible or electronic), and letters of credit (other than letters of credit in favor of Lender), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally;

(ix) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(x) all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records");

(xi) (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing or use of the Land or Improvements; (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i) above; (iii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii) above; (iv) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Land or Improvements; and (v) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations (collectively, the "Permits") now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Land or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Borrower;

(xii) all income, consideration, issues, accounts, investment property, deposit accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Project including all revenues, receipts, income, receivables, payment intangibles, investment property, accounts, and deposit accounts relating to or arising from rentals, rent equivalent income, food and beverage facilities, vending machines, and the provision or sale of other goods and services;

(xiii) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD the Project unto Trustee, forever, and Borrower does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Project unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Borrower shall pay (or cause to be paid) the Secured Obligations as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Secured Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, and otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Lender confirming that the Secured Obligations has not been fully paid, performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

Capitalized terms used above and elsewhere in this Security Instrument without definition have the meanings given them in the Loan Agreement referred to in Section 1.2 below.

**1.2 Secured Obligations.** This Security Instrument is made for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Lender may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") as set forth in the Terms section above, and bearing interest and being payable as set forth therein, and maturing on the Maturity Date, and all modifications, increases, refinancings, renewals, rearrangements, reinstatements, enlargements and extensions thereof (or of any promissory note or notes given in renewal, substitution or replacement thereof); and

(ii) Payment and performance of all obligations of Borrower under a Loan Agreement of even date herewith by and between Borrower and Lender (the "Loan Agreement"); and

(iii) Payment and performance of all obligations of Borrower under this Security Instrument; and

(iv) Payment and performance of any obligations of Borrower under any Loan Documents (as defined in the Loan Agreement) which are executed by Borrower EXCEPT FOR the obligations of Borrower under that certain Environmental Indemnity Agreement of even date herewith executed by Borrower for the benefit of Lender, which are NOT secured hereby; and

(v) Payment and performance of all future advances and other obligations that Borrower or any successor in ownership of all or part of the Project may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender,

when a writing evidences the parties' agreement that the advance or obligation be secured by this Security Instrument; and

(vi) Payment and performance of all modifications, amendments, extensions and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Project will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Note or the Loan Agreement which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

**2. ASSIGNMENT OF RENTS.** As an inducement to Lender to make the loan evidenced by the Note and the Loan Agreement, Borrower has contemporaneously herewith executed and delivered to Lender an Assignment of Rents with respect to the Project. The terms thereof are incorporated herein by reference, with the parties acknowledging that the assignment contained therein is a present and absolute assignment and not a collateral assignment of Borrower's interest in the Rents described therein. In addition to any rights hereunder, Lender shall also have the option to elect any and all remedies available under the Utah Uniform Assignment of Rents Act, Title 57, Chapter 26 of the Utah Code Annotated.

**3. GRANT OF SECURITY INTEREST.**

**3.1 Security Agreement.** The parties acknowledge that some of the Project and some or all of the Rents (as defined in the Assignment of Rents) may be determined under applicable law to be personal property or fixtures. To the extent that any Project or Rents may be personal property, Borrower as debtor hereby grants Lender as secured party a security interest in all such Project and Rents, to secure payment and performance of the Secured Obligations. This provision is not in derogation of the absolute assignment of the Rents contained in such Assignment of Rents and incorporated herein by reference in Section 2 above. This Security Instrument constitutes a security agreement under the Uniform Commercial Code in effect from time to time in the State of where the Borrower is formed (the "Code"), covering all such Project and Rents. Any term used or defined in the Code, and not defined in this Security Instrument, shall have the meaning given to the term in the Code, when used in this Security Instrument.

**3.2 Financing Statements.** Borrower shall authorize the filing of one or more financing statements and shall execute such other documents as Lender may from time to time reasonably require to perfect or continue the perfection of Lender's security interest in any Project or Rents. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by applicable law, including, without limitation, financing statements listing the collateral as "all assets", as applicable to the Project. Borrower shall pay all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require; and in addition, Borrower

hereby appoints Lender as its true and lawful attorney-in-fact to execute any such documents on its behalf.

**3.3 Notice of Changes.** Borrower shall not change Borrower's name or business structure, including Borrower's state of organization or registration, without in each instance the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Lender's consent will, however, be conditioned upon, among other things, the delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Project as a result of such changes. Borrower's principal place of business and its chief executive office as of the date hereof are located at the address set forth in the initial paragraph of this Security Instrument.

**3.4 Fixture Filing.** This Security Instrument constitutes a financing statement filed as a fixture filing under Sections 70A-9a-334 and 70A-9a of the Code, as amended, as recodified or as in effect from time to time, covering any of the Project which now is or later may become fixtures attached to the Land or the Improvements. The mailing addresses of Borrower, as debtor under the Code, and Lender, as secured party under the Code, respectively, are as set forth in the Terms section above.

#### **4. REPRESENTATIONS, COVENANTS AND AGREEMENTS.**

**4.1 Good Title.** Borrower covenants that it is lawfully seized of the Project, that the Project is unencumbered except for the Permitted Exceptions (as defined in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Project and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

**4.2 Insurance; Condemnation.** In the event of any loss or damage to any portion of the Project due to fire or other casualty, or a taking of any portion of the Project by condemnation or under the power of eminent domain, the settlement of all insurance and condemnation claims and awards and the application of insurance and condemnation proceeds shall be governed by Section 5 of the Loan Agreement.

**4.3 Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Security Instrument, Borrower covenants and agrees to pay such tax in the manner required by any such law. **Borrower further covenants to hold harmless and agrees to indemnify Lender, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Security Instrument.**

**4.4 Changes in Taxation.** In the event of the enactment after this date of any law of the State in which the Project is located or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts

secured by mortgages or the Lender's interest in the Project, or the manner of collection of taxes, so as to affect this Security Instrument or the Secured Obligations, then Borrower, upon demand by Lender, shall pay such taxes or assessments, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (i) it might be unlawful to require Borrower to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the Secured Obligations to be and become due and payable sixty (60) days from the giving of such notice.

**4.5 Subrogation.** Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Lender in accordance with this Security Instrument or with the proceeds of any loan secured by this Security Instrument.

**4.6 Notice of Change.** Borrower shall give Lender prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Project, including the Books and Records; and (c) Borrower's name or business structure. Unless otherwise approved by Lender in writing, the Project that consists of personal property (other than the Books and Records) will be located on the Land and all Books and Records will be located at Borrower's place of business or chief executive office if Borrower has more than one place of business.

**4.7 Releases, Extensions, Modifications and Additional Security.** From time to time, Lender may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; (iv) alter, substitute or release any property securing the Secured Obligations; (v) consent to the making of any plat or map of the Project or any part of it; (vi) join in granting any easement or creating any restriction affecting the Project; or (vii) join in any subordination or other agreement affecting this Security Instrument or the lien of it.

**4.8 Letter of Credit Rights.** If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referred to in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit, or (ii) arrange for Lender to become the transferee Lender of the letter of credit, with Lender agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be held by Lender for purposes of securing payment and performance of the Secured Obligations (and with respect to any letter of credit given by tenant in conjunction with a lease, the letter of credit shall be released by Lender upon the timely performance of all lease obligations by such tenant and the absence of any Event of Default under the Loan Documents, except as otherwise required by applicable law or pursuant to the terms of the



subject lease), and upon the occurrence of an Event of Default, are to be applied as provided in Section 5.5 of this Security Instrument.

## **5. DEFAULTS AND REMEDIES.**

**5.1 Events of Default.** An “Event of Default,” as defined in the Loan Agreement, shall constitute an Event of Default hereunder.

**5.2 Lender's Remedies Upon Default.** Upon the occurrence of an Event of Default, Lender may, at Lender's option, and by or through Trustee, by Lender itself or otherwise, do any one or more of the following:

(i) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in this Security Instrument or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Secured Obligations, and Borrower promises, upon demand, to pay to Lender, at the place where the Note is payable, all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance, or which Lender may pay.

(ii) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Project, or any part thereof, and take exclusive possession of the Project and of all books, records, and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection, or preservation of the Project, including without limitation the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by the Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Project and to apply the remainder of such Rents on the Secured Obligations in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by the Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Project, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Secured Obligations. If necessary to obtain the possession provided for above, the Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Lender pursuant to this subsection, the Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Project, or any part thereof, or from any other act or omission of the Lender in managing the Project unless such loss is caused by the willful misconduct of the Lender, nor shall the Lender be

obligated to perform or discharge any obligation, duty, or liability under any lease or under or by reason hereof or the exercise of rights or remedies hereunder. **Borrower shall and does hereby agree to indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss, or damage, which may or might be incurred by the Lender under any such lease or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such lease.** Should the Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Borrower shall reimburse the Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Lender for the control, care, management, leasing, or repair of the Project, nor for the carrying out of any of the terms and conditions of any such lease; nor shall it operate to make the Lender responsible or liable for any waste committed on the Project by the tenants or by any other parties, or for any Hazardous Substance on or under the Project, or for any dangerous or defective condition of the Project or for any negligence in the management, leasing, upkeep, repair, or control of the Project resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of the Lender with respect to the Project taken under this subsection. Notwithstanding anything in this Security Instrument to the contrary, the indemnity provided under this Section 5.2(b) will not apply to any liability, loss, cost, expense or damage (including reasonable attorney fees) to the extent that they solely result from the gross negligence, willful misconduct or bad faith of Lender.

In no event shall the terms and provisions of this Section 5.2(b) amend, modify, expand or supplement, and this Section 5.2(b) shall be subject to, the terms and provisions of Section 9.18 of the Loan Agreement.

(iii) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Secured Obligations, declare the entire unpaid balance of the Secured Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Secured Obligations shall be immediately due and payable. The failure to exercise any remedy available to the Lender shall not be deemed to be a waiver of any rights or remedies of the Lender under the Loan Documents, at law or in equity.

(iv) Foreclosure-Power of Sale. Lender may cause any or all of the Project to be sold under the power of sale granted hereby in any manner permitted by applicable law, including in accordance with Title 57, Chapter 1 of the Utah Code Annotated (as existing now, or hereafter amended) and the Uniform Commercial Code of the State of Utah, and as more fully provided in Section 9.1(a) below

(v) Lender's Judicial Remedies. Lender, or Trustee, upon written request of Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Secured Obligations and the performance and discharge of the Secured Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Security Instrument as against all or any part of the Project, and to have all or any part of the Project sold under the judgment or decree of a court of competent jurisdiction, including without limitation, foreclosure of the lien of this Security Instrument as a mortgage in accordance with the Lender's rights under *Utah Code Annotated* Section 57-1-23 or other applicable law. This remedy shall be cumulative of any other nonjudicial remedies available to the Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Lender.

(vi) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment of the Secured Obligations and performance and discharge of the Secured Obligations, without notice to Borrower and without any showing of insolvency, fraud, or mismanagement on the part of Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to, in accordance with the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* Section 78B-21-101, the appointment of a receiver or receivers of the Project or any part thereof, and of the Rents, and Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(vii) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement with respect to fixtures and personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code:

(i) the Lender may, without demand or notice to Borrower, enter upon the Project to take possession of, assemble, receive, and collect the personalty, or any part thereof, or to render it unusable; and

(ii) the Lender may require Borrower to assemble the personalty and make it available at a place the Lender designates which is mutually convenient to allow the Lender to take possession or dispose of the personalty; and

(iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the personalty or prior to the date after which private sale of the personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable

manner if held contemporaneously with the sale of the other Project under power of sale as provided herein upon giving the same notice with respect to the sale of the personalty hereunder as is required for such sale of the other Project under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 70A-9a-604 of the Code; and

(v) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the personalty and the other Project may, at the option of the Lender, be sold as a whole; and

(vi) it shall not be necessary that the Lender take possession of the personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the personalty to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by the Lender; and

(viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Lender, Borrower shall assemble the personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to Borrower and Lender. Borrower agrees that Lender shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Borrower shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Lender in connection with the collection of the Secured Obligations and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the personalty against the Secured Obligations in accordance with the provisions of Section 5.5 of this Security Instrument. Subject to the terms and provisions of Section 9.18 of the Loan Agreement, Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the personalty are insufficient to pay the Secured Obligations in full. Borrower waives all rights of marshalling in respect of the personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Event of Default, the Lender having declared all or a portion of such Secured Obligations

to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by the Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) the Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Lender.

(viii) Rights Relating to Rents. Lender shall have and may exercise any and all other rights and remedies which Lender may have under the foregoing Assignment of Rents with respect to the rights of Lender thereunder.

(ix) Other Rights. Lender shall have and may exercise any and all other rights and remedies which Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(x) Lender as Purchaser. Lender may be the purchaser of the Project or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Project so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Secured Obligations. The Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Lender's purchase shall be applied in accordance with Section 5.5 of this Security Instrument.

**5.3 Other Rights of Lender**. Should any part of the Project come into the possession of Lender, whether before or after default, Lender may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Project for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Project or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Project. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Lender in connection with Lender's custody, preservation, use, or operation of the Project, together with interest thereon from the date incurred by Lender at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Secured Obligations. It is agreed, however, that the risk of loss or damage to the Project is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Project, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by the Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Project or collateral not in Lender's possession.

**5.4 Possession After Foreclosure.** If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Project so occupied and sold to such purchaser), and anyone occupying such portion of the Project, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

**5.5 Application of Proceeds.** The proceeds from any sale, lease, or other disposition made pursuant to this Section 5 shall be applied by Trustee, or by Lender, as the case may be, to the Secured Obligations in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Project or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed five percent of the proceeds thereof or sums so received; (2) to that portion, if any, of the Secured Obligations with respect to which no person or entity has personal or entity liability for payment (the "Exculpated Portion"), and with respect to the Exculpated Portion as follows: first, to accrued but unpaid interest, second, to matured principal, and third, to unmatured principal in inverse order of maturity; (3) to the remainder of the Secured Obligations as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Note, and third, to prepayment of the unmatured portion, if any, of principal of the Note applied to installments of principal in inverse order of maturity; (4) the balance, if any or to the extent applicable, remaining after the full performance and discharge of the Secured Obligations 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. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Secured Obligations like any other payment. The balance of the Secured Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents (subject, however, to the terms and provisions of Section 7.13 herein).

**5.6 Abandonment of Sale.** In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 5.2(d) hereof, at any time before the sale, Trustee may abandon the sale, and Lender may then institute suit for the collection of the Secured Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Lender should institute a suit for the collection of the Secured Obligations and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Project or any part thereof in accordance with the provisions of this Security Instrument.

**5.7 Payment of Fees.** If the Note or any other part of the Secured Obligations shall be collected or if any of the Secured Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney

for collection after maturity, whether matured by the expiration of time or by an option given to the Lender to mature same, or if Lender becomes a party to any suit where this Security Instrument or the Project or any part thereof is involved, Borrower agrees to pay Lender's attorneys' fees and expenses incurred, and such fees and expenses shall be and become a part of the Secured Obligations and shall bear interest from the date such costs are incurred at the Default Rate.

#### **5.8 Miscellaneous.**

(i) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Project or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(ii) In addition to the remedies set forth herein, upon the occurrence of an Event of Default, the Lender and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(iii) All rights, remedies, and recourses of Lender granted in the Note, this Security Instrument, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Project, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Project prior to Lender bringing suit to recover the Secured Obligations or suit on the Secured Obligations; and (vi) in the event Lender elects to bring suit on the Secured Obligations and/or the Secured Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Project, all liens and security interests, including the lien of this Security Instrument, shall remain in full force and effect and may be exercised at Lender's option.

(iv) Lender may release, regardless of consideration, any part of the Project without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Security Instrument or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Secured Obligations or perform and discharge the Secured Obligations. For payment of the Secured Obligations, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(v) Borrower hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Project from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default (other than notices expressly provided for under the Loan Documents); (iii) all notices of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents (other than notices required under applicable law); and (iv) any right to a marshalling of assets or a sale in inverse order of alienation.

(vi) Borrower and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Security Instrument and the other Loan Documents. All agreed contractual duties are set forth in this Security Instrument, the Note, and the other Loan Documents.

(vii) The remedies in Section 5.2(d) are available under and governed by the real property laws of the State of Utah and are not governed by the personal property laws of the State of Utah in accordance with the provisions of Section 70A-9a-604 of the Code, including, the power to dispose of personal property in a commercially reasonable manner under Section 70A-9a-627 of the Code or the application of proceeds under Section 70A-9a-615 of the Code. No action by Lender taken pursuant to this subsection shall be deemed to be an acceptance of collateral in satisfaction of obligations under Section 70A-9a-620 of the Code. Any receipt of consideration received by Lender pursuant to Section 5.2(d) shall be immediately credited against the Secured Obligations (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Secured Obligations.

(viii) If the Project consists of more than one lot, parcel or item of property, Lender may:

(i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale, or pursuant to the power of sale contained herein; or through two or more such sales or dispositions; or in any other manner Lender may deem to be in its best interests (any foreclosure sale or disposition as permitted by the terms hereof is sometimes referred to herein as a "Foreclosure Sale;" and any two or more such sales, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this



Security Instrument on any part of the Project which has not been sold, until all of the Secured Obligations have been paid in full.

6. **RELEASE OF LIEN.** If Borrower shall fully pay and perform all of the Secured Obligations and comply with all of the other terms and provisions hereof and the other Loan Documents to be performed and complied with by Borrower, then Lender shall request the reconveyance this Security Instrument and the lien thereof by proper instrument upon payment, performance and discharge of all of the Secured Obligations and payment by Borrower of any filing fee in connection with such release.

7. **MISCELLANEOUS PROVISIONS.**

7.1 **Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Security Instrument. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Security Instrument and the Project.

7.2 **Giving of Notice.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be given as provided in Section 9.3 of the Loan Agreement.

7.3 **Remedies Not Exclusive.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Lender shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Security Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by Security Instrument, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Security Instrument nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Security Instrument and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No waiver of any default of the Borrower hereunder shall be implied from any omission by the Lender to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Lender at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any.

7.4 **Waiver of Statutory Rights.** To the extent permitted by law, Borrower hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter

enacted, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Project marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Project sold as an entirety. Borrower hereby waives any and all rights of redemption from sale under the power of sale contained herein or any order or decree of foreclosure of this Security Instrument on its behalf and on behalf of each and every person, except decree or judgment creditors of Borrower, acquiring any interest in or title to the Project subsequent to the date of this Security Instrument.

**7.5 Estoppel Affidavits.** Borrower, within five (5) days after written request from Lender, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Secured Obligations and stating whether or not any offset or defense exists against such Secured Obligations, and covering such other matters as Lender may reasonably require.

**7.6 Merger.** No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Project unless Lender consents to a merger in writing.

**7.7 Binding on Successors and Assigns.** This Security Instrument and all provisions hereof shall be binding upon Borrower and all persons claiming under or through Borrower, and shall inure to the benefit of Lender and its successors and assigns.

**7.8 Captions.** The captions and headings of various paragraphs of this Security Instrument are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**7.9 Severability.** If all or any portion of any provision of this Security Instrument shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof was not contained herein.

**7.10 Effect of Extensions of Time and Amendments.** If the payment of the Secured Obligations or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Project, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Lender, notwithstanding such extension, variation or release. Nothing in this Section 7.10 shall be construed as waiving any provision contained herein or in the Loan Documents which provides, among other things, that it shall constitute an Event of Default if the Project be sold, conveyed, or encumbered.

**7.11 Lender's Lien for Service Charge and Expenses.** At all times, regardless of whether any proceeds of the loan secured hereby have been disbursed, this Security Instrument secures (in addition to the amounts secured hereby) the payment of any and all Loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by

Lender in connection with the Loan; provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Note.

**7.12 Applicable Law.** This Security Instrument shall be governed by and construed under the internal laws of the State in which the Project is located.

**7.13 Limitation of Liability.** The provisions of Section 9.18 of the Loan Agreement are hereby incorporated by reference.

**7.14 Entire Agreement; Amendment.** THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Security Instrument and the Loan Documents may be amended or waived only by an instrument in writing signed by the Borrower and Lender.

**7.15 Instrument.** This Security Instrument shall be deemed to be and shall be enforceable as a deed of trust, security agreement and fixture filing.

**7.16 Due on Sale.** As more fully set forth in Section 6.2 of the Loan Agreement, the assignment, sale, conveyance, pledge, transfer or encumbrance of the Project, or any interest therein, or the transfer of an interest in Borrower, except for the permitted transfers set forth in Section 6.3 of the Loan Agreement, without prior written consent of Lender, shall constitute an Event of Default.

**7.17 Time is of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Security Instrument, the Note and the other Loan Documents.

**7.18 Recordation.** Borrower forthwith upon the execution and delivery of this Security Instrument, and thereafter from time to time, will cause this Security Instrument, and any security instrument creating a lien or evidencing the lien hereof upon the Project, or any portion thereof, 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 the lien hereof upon, and the interest of Lender in, the Project.

Borrower will pay all filing, registration or recording fees and taxes, and all expenses incident to the preparation, execution and acknowledgment of this Security Instrument, any Security Instrument supplemental hereto, any security instrument with respect to the Project and any instrument of further assurance, and all federal, state, county and municipal stamp taxes, duties, impositions, assessments and charges arising out of or in connection with the execution

and delivery of the Note, this Security Instrument, any Security Instrument supplemental hereto, any security instrument, any other Loan Documents or any instrument of further assurance.

**7.19 Modifications.** This Security Instrument may not be changed or terminated except in writing signed by both parties. The provisions of this Security Instrument shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the other Loan Documents, and any and all references herein to the Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

**7.20 Independence of Security.** Borrower shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Security Instrument to rely on the Project or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Lender any and all rights to give consent for all or any portion of the Project to rely on any premises not subject to the lien of this Security Instrument or any interest therein to fulfill any municipal or governmental requirement. Borrower shall not by act or omission impair the integrity of the Project as a single zoning lot, and as one or more complete tax parcels, separate and apart from all other premises. Any act or omission by Borrower which would result in a violation of any of the provisions of this Section 7.21 shall be void.

**7.21 Joint and Several Liability.** If Borrower consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Borrower's obligations under this Security Instrument.

## **8. CONCERNING THE TRUSTEE.**

**8.1 No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Lender.

**8.2 Certain Rights.** With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any

act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Project for debts contracted for or liability or damages incurred in the management or operation of the Project. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Borrower will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

**8.3 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**8.4 Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender and recording a notice of such resignation in accordance with Section 57-1-22, Utah Code Annotated or other applicable law. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Security Instrument or applicable law.

**8.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds,

conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

**8.6 Succession Instruments.** Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

**8.7 No Representation by Trustee or Lender.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

**8.8 Single or Multiple Foreclosure Sales.** If the Project consists of more than one lot, parcel or item of property, Lender may:

(i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale, or pursuant to the power of sale contained herein; or through two or more such sales or dispositions; or in any other manner Lender may deem to be in its best interests (any foreclosure sale or disposition as permitted by the terms hereof is sometimes referred to herein as a "Foreclosure Sale;" and any two or more such sales, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Security Instrument on any part of the Project which has not been sold, until all of the Secured Obligations have been paid in full.

## **9. SPECIAL STATE PROVISIONS.**

**9.1 Inconsistencies.** In the event of any inconsistencies between the terms and conditions of this Section 9 and the other provisions of this Security Instrument, the terms and conditions of this Section 9 shall control and be binding.

(a) **Foreclosure-Power of Sale.** Lender may institute and exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Borrower's interest in the Project to be sold in accordance with Utah Code Annotated Section 57-1-24. 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 Borrower, shall sell the Project 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 Borrower'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, shall 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 shall be completed and, in every such case, notice of postponement shall 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 shall be given in the same manner as the original notice of sale as required by Utah Code Annotated Section 57-1-27. Trustee shall 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 express or implied. Except as otherwise provided by Section 57-1-28, Utah Code Annotated, or other applicable law, the recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Upon any sale made under or by virtue of this section, 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 Project, 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 shall make settlement for the purchase price by crediting upon the Secured Obligations such credit bid amount. Lender, upon so acquiring the Project or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. For purposes of Utah Code Annotated Section 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the Project, and (ii) Lender may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all unpaid late charges in any credit bid Lender may make at a foreclosure sale of the Project pursuant to this Deed of Trust. 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 Deed of Trust, this Deed of Trust 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.

(b) Deficiency. Subject to the terms and provisions of Section 9.18 of the Loan Agreement, Borrower agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any sale, and Lender may commence suit to collect such deficiency in accordance with Utah Code Annotated Section 57-1-32 or other applicable law.

(c) Reinstatement. If Borrower, Borrower's successor in interest or any other person having a subordinate lien or encumbrance of record on the Project, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated Section 57-1-31(1), such party shall 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 shall record a notice of cancellation of the pending sale.

(d) Request for Notice. Lender and Borrower each hereby requests, pursuant to Utah Code Annotated Section 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

(e) Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Code, Lender, upon an Event of Default, may proceed under the Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust 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.

(f) Residential Property. For purposes of Utah Code Annotated Section 57-1-25 and Utah Code Annotated Section 78B-6-901.5, Borrower agrees that the stated purpose for which this Security Instrument was given is not to finance residential rental property.

(g) Mechanic's and Materialmen's Liens.

(i) Subject to Borrower's right to contest under Section 3.4 of the Loan Agreement, Borrower agrees to promptly pay all bills for labor and materials incurred in connection with the Land and to prevent the recording of any lien against any part of the Land, even if it is inferior to this Security Instrument, for any such bill which may be legally due and payable. Borrower agrees to furnish due proof of such payment to Lender after payment and before delinquency.

(ii) Borrower represents and warrants to Lender that there are 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). Borrower 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 Land.

(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, Borrower covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to Utah Code Annotated Section 38-1a-503(2)(b)(ii) and Borrower shall provide to Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction work that the claimant furnished before the recording of this Security Instrument pursuant to Utah Code Annotated Section 38-1a-503(2)(b)(i) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction lien or a construction lien dates immediately after the recording of this Security Instrument.

(iv) Borrower 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 Land 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.

(v) If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements of the Loan Agreement, 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 Land from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Borrower of and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by Utah Code Annotated Section 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower 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 set forth in the Note.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust, Security Agreement and Fixture Filing as of the date first written above.

**BORROWER:**

**LANDMARK 14 LLC,**  
a Utah limited liability company

By: KWS Companies Management, Inc.,  
a Nevada corporation

Its: Manager

By:   
Kern W. Schumacher, President

State of ~~Utah~~ *Arizona*

County of ~~Salt Lake~~ *Maricopa* ss.

On this *17<sup>th</sup>* day of December, 2019, before me *Shelley Kowaliski*, a notary public, personally appeared Kern W. Schumacher as President of KWS Companies Management, Inc., a Nevada corporation, as Manager of Landmark 14 LLC, a Utah limited liability company, on behalf of said limited liability company, and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

Notary Signature *Shelley Kowaliski*

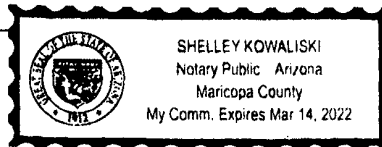


EXHIBIT A

LEGAL DESCRIPTION

Real property in the County of Salt Lake, State of Utah, described as follows:

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE EXISTING WESTERLY RIGHT OF WAY LINE OF 5600 WEST STREET, WHICH IS 150.16 FEET SOUTH 00°14'53" WEST ALONG THE SECTION LINE AND 75.00 FEET NORTH 89°45'07" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 14; AND RUNNING THENCE SOUTH 00°14'53" WEST 2509.88 FEET; THENCE SOUTH 00°15'25" WEST 114.96 FEET; THENCE WEST 825.82 FEET; THENCE NORTH 1382.70 FEET; THENCE NORTH 08°03'05" EAST 1170.55 FEET; THENCE NORTH 82°57'48" EAST 678.37 FEET TO THE POINT OF BEGINNING.