

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attention: Seth W. Eaton, Esq.  
CTIA#89498-TF

APN(s): 67-008-0001 and 67-008-0002

ENT 86364:2019 PG 1 of 11  
Jeffery Smith  
Utah County Recorder  
2019 Sep 04 03:32 PM FEE 40.00 BY MA  
RECORDED FOR Cottonwood Title Insurance Agency, Inc.  
ELECTRONICALLY RECORDED

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### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 4th day of September, 2019, by **MILLPOND APARTMENTS DE, LLC**, a Delaware limited liability company, as assignor ("Assignor") to **ACORE CAPITAL MORTGAGE, LP**, a Delaware limited partnership, in its capacity as Administrative Agent for and on behalf of the Lenders from time to time party to the Loan Agreement defined below (together with its successors and/or assigns, "Assignee").

#### RECITALS:

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith among Assignor, the Lenders from time to time party thereto, and Assignee, the initial Lender has agreed to make a Loan to Assignor in the original principal amount of up to THIRTY-FIVE MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND AND 00/100 DOLLARS (\$35,884,000.00) (as the same may be amended, the "Loan Agreement"); capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement; and

WHEREAS, the initial Lender is not willing to make the Loan to Assignor unless Assignor executes and delivers this Assignment.

NOW, THEREFORE, as an inducement to the initial Lender to make the Loan to Assignor, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Assignment. Assignor hereby absolutely and unconditionally assigns and grants to Assignee in accordance with the Utah Act (as defined below), and grants a security interest in and to, in accordance with the Utah Uniform Commercial Code, Utah Code Ann. Section 70A-9a-101 et seq. (the "Utah UCC"), all of Assignor's right, title and interest in and to the following property, rights, interests and estates, now owned, or hereafter acquired by Assignor: (a) all existing and future Leases encumbering or relating to the Land (and the Improvements thereon) more particularly described in Exhibit A attached hereto; (b) all rents (including those as defined in the Utah Uniform Assignment of Rents Act, *Utah Code Ann. Section 57-26-101 et seq.* (the "Utah Act")), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent equivalents, additional rents,

revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits), accounts and receipts payable pursuant to any Lease or otherwise from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), including all claims and rights to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code (collectively, the "Rents"); (c) all of Assignor's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support (a "Lease Guaranty") given by any Person in connection with any of the Leases; (d) all proceeds from the sale or other disposition of the Leases, the Rents, and the Lease Guaranties; (e) all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties; and (f) any and all other rights of Assignor in and to the items set forth in clauses (a) through (e) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

2. Present Assignment and License Back. The assignment described in Section 1 above constitutes a present, absolute assignment of the property and rights described therein (and is not an assignment for security purposes only); provided, however, subject to the terms of the Loan Agreement, Assignee grants to Assignor a revocable license to collect, receive, use and enjoy the Rents and other sums due under the Leases and the Lease Guaranties, and to otherwise deal with the Leases, in accordance with the terms and conditions of the Loan Agreement effective so long as no Event of Default exists.

3. Default; Remedies. During the existence of an Event of Default, to the fullest extent permitted by, and subject to, applicable law: (a) the license granted to Assignor in Section 2 of this Assignment shall automatically be revoked, and Assignee shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Assignee enters upon or takes control of the Property; (b) Assignee shall have the right to enter upon the Property in person, by agent or by court-appointed receiver, and shall have an absolute right to the appointment of a receiver of its choosing, to facilitate or exercise Assignee's rights and remedies hereunder; (c) Assignee, at its option, may (i) complete any construction on the Property in such manner and form as Assignee deems advisable, (ii) exercise all rights and powers of Assignor, including, without limitation, the right to negotiate, execute, cancel, enforce or modify any Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (iii) require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Assignor, and/or (iv) require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise; and (d) Assignee may exercise any right or remedy under the Utah UCC or Utah Act, or other applicable law. Assignor hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Property and all

guarantors of a Lease to pay over to Assignee or to such other party as Assignee directs all Rents and all sums due under any Lease Guaranties upon receipt from Assignee of written notice to the effect that Assignee is then the holder of this Assignment and that an Event of Default (as defined in the Loan Agreement) exists, and to continue so to do until otherwise notified by Assignee. Assignor grants Assignee an irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment, effective during the existence of an Event of Default. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

4. Waivers. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee or Lenders of their rights and remedies under the Loan Agreement, the Notes, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee or Lenders under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Assignor under this Assignment, the Loan Agreement, the Notes, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Assignee to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Notes, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Assignor's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Assignor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Assignee in any separate action or proceeding).

5. Bankruptcy. Upon or at any time after the occurrence and during the continuance of an Event of Default, Assignee shall, to the fullest extent permitted by applicable law, have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided

for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

6. No Liability of Assignee. This Assignment shall not be construed to bind Assignee or Lenders to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Assignee. Neither Lenders nor Assignee shall be liable for any loss sustained by Assignor resulting from Assignee's failure to lease space at the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after an Event of Default unless such loss is caused by gross negligence, illegal acts, willful misconduct or bad faith of Assignee.

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

8. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

9. GOVERNING LAW; JURISDICTION; SERVICE OF PROCESS. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE LOAN DOCUMENTS, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ASSIGNOR (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE COUNTY WHERE THE PROPERTY IS LOCATED OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID COUNTY, (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR

PROCEEDING AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. ASSIGNOR IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY SERVICE OF COPIES OF SUCH PROCESS TO ASSIGNOR AT ITS ADDRESS PROVIDED HEREIN. NOTHING CONTAINED IN THIS ASSIGNMENT SHALL PREVENT ASSIGNEE FROM BRINGING AN ACTION, ENFORCING ANY AWARD OR JUDGMENT, OR EXERCISING ANY RIGHT OR REMEDY AGAINST ASSIGNOR, OR AGAINST ANY SECURITY OR COLLATERAL FOR THE DEBT, WITHIN ANY OTHER COUNTY, STATE OR ANY OTHER FOREIGN OR DOMESTIC JURISDICTION.

10. WAIVER OF TRIAL BY JURY. ASSIGNOR AND ASSIGNEE (BY ITS ACCEPTANCE OF THIS ASSIGNMENT) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, THE NOTES, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDERS, ASSIGNEE, THEIR OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF ASSIGNOR AND ASSIGNEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF ASSIGNOR AND ASSIGNEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

11. Termination of Assignment. Upon payment in full of the Debt, this Assignment shall become and be void and of no effect.

12. Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 8.6 of the Loan Agreement.

13. Exculpation. The provisions of Section 6.3 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

14. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor, Lenders and Assignee and their respective successors and assigns forever.

15. Utah Uniform Assignment of Rents Act. This Assignment is subject to the Utah Act and in the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Utah Act, the provisions of the Utah Act shall control and Assignee shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder. To the extent this Assignment is deemed

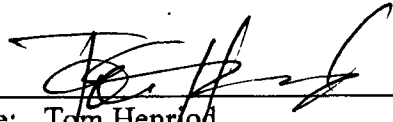
to be a collateral assignment under the Utah Act, this Assignment shall secure the payment and performance of all obligations secured by the Security Instrument.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

**ASSIGNOR:**

**MILLPOND APARTMENTS DE, LLC,**  
a Delaware limited liability company

By:   
Name: Tom Henrod  
Title: Authorized Representative

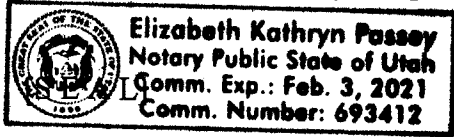
By: \_\_\_\_\_  
Name: Mark Hampton  
Title: Authorized Representative

STATE OF Utah

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§  
§

COUNTY OF Salt Lake

This instrument was ACKNOWLEDGED before me on August 23, 2019, by Tom Henriod, as Authorized Representative of MILLPOND APARTMENTS DE, LLC, a Delaware limited liability company, on behalf of said limited liability company.



[Signature]  
Notary Public, State of Utah

My Commission Expires:

2/3/21

Elizabeth Passey  
Printed Name of Notary Public

Residing at:

1299 W 1800 N PM UT 84043

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 2019, by Mark Hampton, as Authorized Representative of MILLPOND APARTMENTS DE, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[S E A L]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

Residing at:

\_\_\_\_\_



IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

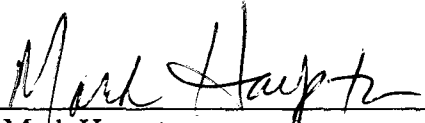
**ASSIGNOR:**

**MILLPOND APARTMENTS DE, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Tom Henriod

Title: Authorized Representative

By:  \_\_\_\_\_

Name: Mark Hampton

Title: Authorized Representative

STATE OF \_\_\_\_\_

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COUNTY OF \_\_\_\_\_

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 2019, by Tom Henriod, as Authorized Representative of MILLPOND APARTMENTS DE, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[S E A L]

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

Residing at:

STATE OF Utah

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COUNTY OF Salt Lake

This instrument was ACKNOWLEDGED before me on August 26, 2019, by Mark Hampton, as Authorized Representative of MILLPOND APARTMENTS DE, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[S E A L]

*Justin John*  
Notary Public, State of Utah

My Commission Expires:

Justin John  
Printed Name of Notary Public

7-17-22

Residing at:

Utah County, UT

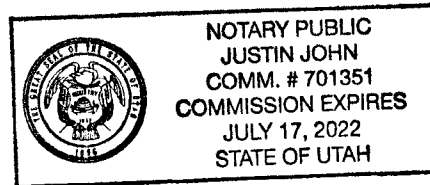


EXHIBIT A

(Legal Description of Property)

Lot 1 and Parcel A, MILLPOND APARTMENTS PLAT "A", according to the official plat thereof on file and of record in the Utah County Recorder's office, recorded February 1, 2018 as Entry No. 10418:2018.