

01064297 B: 2398 P: 0724

Page 1 of 8

Mary Ann Trussell, Summit County Utah Recorder

02/23/2017 01:22:53 PM Fee \$24.00

By Park City Title

Electronically Recorded

WHEN RECORDED, RETURN TO:

Matthew B. Hutchinson
DART, ADAMSON & DONOVAN
1225 Deer Valley Drive, Suite 201
Park City, Utah 84060

30242

TRUST DEED

With Assignment of Rents

THIS TRUST DEED is entered into by and between SQC COMMERCIAL, LLC, a Utah limited liability company, as **Trustor**, whose mailing address is 1225 Deer Valley Drive, Suite 201, Park City, Utah, 84060, PARK CITY TITLE COMPANY, as **Trustee**, whose mailing address is 1670 Bonanza Drive, Suite 105, Park City, Utah 84060 and MORIY WEST, LLC, a Utah limited liability company, as **Beneficiary**, whose mailing address is 49 E. 21st Street, #7B, New York, New York, 10010,

TRUSTOR HEREBY IRREVOCABLY GRANTS, TRANSFERS, CONVEYS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, together with any interest therein subsequently acquired by Trustor, real property located in Summit County, Utah, commonly known as Commercial Unit, 632 Main Street, Park City, Utah 84060, and more particularly described in **Exhibit A** hereto, together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter, used or enjoyed with the subject property, or any part thereof, which shall be hereinafter collectively referred to as the "**Property**", subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits in the absence of a default.

The above conveyance of the Property to the Trustee shall be for the purpose of securing:

- i. the payment of indebtedness evidenced by a Promissory Note of even date herewith (the "**Note**"), in the initial principal amount of Two Million Two Hundred Thousand Dollars and no cents (\$2,200,000.00) made by Trustor ("**Borrower**"), and payable to the order of Beneficiary at the times, in the manner, and with the interest as therein set forth;
- ii. the payment of such additional loans or advances as hereafter may be made by Beneficiary to Borrower, Trustor, or their respective successors or assigns, when evidenced by a written note or notes reciting that they are secured by this Trust Deed;
- iii. the performance of each agreement of Trustor and Borrower contained herein or in the Note; and
- iv. the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

TO PROTECT THE SECURITY OF THE TRUST DEED, TRUSTOR HEREBY UNCONDITIONALLY COVENANTS, WARRANTS AND AGREES AS FOLLOWS:

A. Borrower shall promptly pay when due any and all financial obligations pursuant to the Note.

B. Trustor is lawfully seized and possessed of good and indefeasible title and estate to the Property and has the right to grant and convey the Property pursuant to this Trust Deed; the lien created hereby shall constitute a first lien, financial encumbrance and security interest against the Property; the Property is free and clear of all other liens and financial encumbrances; and Trustor will warrant and defend the title to the Property as conveyed herein to Trustee against any and all claims and demand.

C. Trustor shall keep the Property in good condition and repair, not remove or demolish any building thereon, complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon. Trustor shall comply with all laws, covenants and restrictions affecting the Property, not commit or permit waste thereof, not commit, suffer or permit any act upon the Property in violation of law, and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general. If the loan secured hereby or any part thereof is being obtained for the purpose of financing the construction of improvements on the Property, Trustor further agrees to commence construction promptly and to pursue the same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and to allow Beneficiary to inspect the Property at all times during construction.

D. Trustor shall provide and maintain insurance, of such type or types and amounts as Beneficiary may reasonably require, on the improvements now existing or hereafter erected or placed on the Property, including, but not limited to, fire and other hazards included within the term "extended coverage," as Beneficiary may require from time to time. Such insurance shall be carried in companies reasonably approved by Beneficiary with loss payable clauses in favor of and in form reasonably acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness secured hereby or to the restoration or repair of the property damaged.

E. Trustor shall deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance affording "extended coverage" to Lender, and any renewals thereof or supplements thereto.

F. Trustor shall appear in and defend any action or proceeding purporting to affect the Property, the title to the Property, or the rights or powers of Beneficiary or Trustee as they relate to the Property. In the event that Beneficiary or Trustee elect, in their sole and absolute discretion, to also appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including cost of evidence of title and attorney fees incurred by Beneficiary or Trustee.

G. Trustor shall pay before delinquency any and all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property.

H. Trustor shall promptly pay, when due, any and all encumbrances, charges and/or liens against the Property or any part thereof, including, but not limited to, principal, interest, fees, penalties, legal costs, and attorney fees as appropriate; provided that Trustor may, at its option, bond over any mechanic's lien against the Property in the manner provided under Utah law.

I. Should Trustor or Borrower fail to make any payment or do any act as herein provided, the Beneficiary or Trustee, but without any obligation to do so, and without the need for prior notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the sole discretionary judgment of either appear to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in their absolute discretion they may deem necessary thereof, including cost of evidence of title, employ counsel, and pay his attorney fees.

J. Trustor shall pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the annual rate of four per cent (4%) until paid, and the repayment thereof shall be secured hereby.

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor to the extent of the outstanding obligations of Trustor to Beneficiary hereunder, and shall be entitled at Beneficiary's option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all of its expenses, including attorney fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

2. At any time and from time to time upon the written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the Note for endorsements (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, the Trustee may: consent to the making of any map or plat of the Property; join in granting any easement or creating any restriction thereon; join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

3. As additional security, Trustor hereby assigns to Beneficiary, any and all rents, issues, royalties, and profits of the Property and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any

agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default, Trustor's right to collect any such monies shall cease and Beneficiary shall have the right, but in no event the obligation, with or without taking possession of the Property, to collect all rents, royalties, issues, and profits, including, but not necessarily limited to, the right, power and authority, but in no event the obligation, of Beneficiary to enter into new leases and agreements with respect to the Property in an attempt to maximize the revenue to be generated and collected from the Property, and to employ such property managers and/or other agents as may be appropriate to facilitate the same, all at the expense of Trustor to be paid on the same terms as any other payment made by Beneficiary on behalf of Trustor and/or the Property pursuant to this Trust Deed. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option. Nevertheless, in the event of a default by Trustor, Beneficiary shall have the ability, but not the obligation, to enter into new leases with respect to the Property. Beneficiary shall not, by reason of any of the foregoing, nor by reason of the collection of any rents, be deemed liable to any tenant for any failure of Trustor to perform and comply with any of Trustor's obligations to such tenant. Trustor hereby irrevocably authorizes and directs any tenant of the Property, upon receipt of written notice from Beneficiary that Trustor is in default with respect to its obligations pursuant to this Trust Deed and the Note, to pay Beneficiary all rents and other payments otherwise due and owing to Trustor. Such tenants shall rely upon any such written notice from Beneficiary and shall pay all such rents and other payments to Beneficiary without any obligation or right to inquire as to whether such default actually exists, notwithstanding any claim from Trustor to the contrary.

4. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

6. TIME IS OF THE ESSENCE HEREOF. Upon the occurrence of any breach or default with respect to the Trustor's obligations pursuant to this Trust Deed or the related Note, Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages on real property.

7. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the Summit County Recorder, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

8. Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless from any and all damages, expenses, claims, liabilities or obligations of any nature whatsoever, whether currently known or unknown, whether liquidated, contingent or otherwise disputed, including, but not limited to, attorney fees and other litigation costs, arising from or in any way related to any environmental issues with the Property that may cause Trustee and/or Beneficiary to be liable for the remediation thereof pursuant to state or federal law, which obligations of Trustor shall survive any reconveyance of this Trust Deed or any judicial or non-judicial sale of the Property in payment of Trustor's financial obligations to Beneficiary secured hereby.

9. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Trust Deed.

10. Upon the transfer or conveyance of all or any fractional interest in the Property, including the grant of any security interest therein, Beneficiary shall have the unrestricted right to accelerate all payments to be made pursuant to the Note, including, but not limited to, outstanding interest and principal, demand that this Note be immediately paid in full, and Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages on real property. Beneficiary may elect to demand payment in full of the Note and foreclose this Trust Deed at any time subsequent to any such transfer, and no delay on the part of Beneficiary in making such demand shall act as a waiver of Beneficiary's right to demand payment in full and commence foreclosure proceedings at some future point in time.

11. The recordation of any financial encumbrance against the Property other than the security interest in favor of Beneficiary evidenced by this Trust Deed, whether voluntary or involuntary on the part of Trustor, shall immediately and automatically constitute a default under the Note and this Trust Deed unless the express written consent of Beneficiary with respect to the financial encumbrance is obtained prior to the recordation thereof, and Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages on real property.

12. Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any default of Trustor under this Trust Deed shall not be deemed to be a waiver of any other or similar defaults subsequently occurring.

13. Should any one or more of the provisions of this Trust Deed be determined to be illegal or unenforceable, all other provisions of this Trust Deed shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be affected thereby.

14. This Trust Deed, or any provision thereof, shall not be construed against Trustor or Beneficiary due to the fact that this Trust Deed, or any provision thereof, was drafted by Trustor or Beneficiary or one of their agents, but rather this Trust Deed shall be construed and interpreted as if it was the product of the joint efforts of Trustor and Beneficiary, with Trustor and Beneficiary each having equal input thereto.

15. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

16. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

17. This Trust Deed shall be governed by the laws of the State of Utah.


18. Should any litigation or other proceeding be commenced by Beneficiary or Trustee against Trustor arising from this Trust Deed, to enforce this Trust Deed, or concerning the rights or duties of any party under this Trust Deed, in addition to any other relief which may be granted, the prevailing party shall be entitled to recover its reasonable costs and attorney fees incurred therein.

19. The undersigned Trustor request that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address first set forth above in this Trust Deed.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Trust Deed, effective as of the 14th day of February, 2017.

SQC COMMERCIAL, LLC, a Utah limited liability company


By: Jeffrey McKibben
Its: Manager

State of New York)
) : ss
County of Nassau)

On this the 14th day of February, 2017, personally appeared before me, Jeffrey McKibben, whose identity is personally known to me or has been proven on the basis of satisfactory evidence, and being first duly sworn, acknowledged that he executed the foregoing instrument in his capacity as the Manager of SQC Commercial, LLC for its stated purpose.

JENNIFER K STEINLE
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01ST6229723
QUALIFIED IN NASSAU COUNTY COUNTY
MY COMMISSION EXPIRES 10-18-2018


Notary Public

EXHIBIT A

UNIT C-1, CONTAINED WITHIN SILVER QUEEN CONDOMINIUMS FIRST AMENDED, TOGETHER WITH ITS APPURTENANT UNDIVIDED OWNERSHIP INTEREST IN AND TO THE COMMON AREAS AND FACILITIES, AS ESTABLISHED AND DESCRIBED IN THE RECORD OF SURVEY MAP RECORDED AUGUST 24, 2015 AS ENTRY NO. 1026468 AND IN THE CONDOMINIUM DECLARATION FOR SILVER QUEEN CONDOMINIUMS RECORDED MAY 5, 1995 AS ENTRY NO. 429305 IN BOOK 881 AT PAGE 674; THE FIRST AMENDMENT TO CONDOMINIUM DECLARATION FOR SILVER QUEEN CONDOMINIUMS RECORDED MARCH 5, 2007 AS ENTRY NO. 806272 IN BOOK 1851 AT PAGE 662, THE SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM FOR SILVER QUEEN CONDOMINIUMS RECORDED AUGUST 24, 2015 AS ENTRY NO. 1026469 IN BOOK 2310 AT PAGE 1129, AND THE THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM FOR SILVER QUEEN CONDOMINIUMS RECORDED ON EVEN DATE HERewith IN THE RECORDS OF SUMMIT COUNTY, UTAH.

Tax Identification No. SQ-C1-1AM