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3/22/2016 12:32:00 PM \$43.00
Book - 10413 Pg - 5196-5212
Gary W. Ott
Recorder, Salt Lake County, UT
BACKMAN TITLE SERVICES
BY: eCASH, DEPUTY - EF 17 P.

**Recorded at the Request of
and After Recording Return To:**

LB Day
Symetra Life Insurance Company
Mortgage Loan Department
PO Box 84066
Seattle, WA 98124-8466
Loan No. 5307

Tax Parcel No. 16-06-402-010, 16-06-402-011

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of March 18, 2016, by BROADWAY APARTMENTS, L.L.C., a Utah limited liability company ("Trustor"), whose address is 1042 Fort Union Blvd. #137, Midvale, UT 84047, to FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation ("Trustee"), whose address is 170 South Main, Suite 135, Salt Lake City, Utah 84101, for the benefit of SYMETRA LIFE INSURANCE COMPANY, an Iowa corporation ("Beneficiary"), whose mailing address is Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466.

1. **Granting Clause:** Upon the terms, covenants, and conditions set forth in this Deed of Trust and in consideration of the loan made by Beneficiary to Trustor (the "Loan"), Trustor hereby grants, sells, conveys, and transfers to the Trustee in trust, for the benefit of Beneficiary, WITH POWER OF SALE, all of Trustor's right, title and interest in and to and derived from the property, estates and related rights, whether now owned or hereafter acquired, situated in Salt Lake County, State of Utah, as more specifically described as follows:

SEE ATTACHED EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY THIS
REFERENCE FOR A FULL LEGAL DESCRIPTION OF THE PROPERTY. (the "Land")

together with all now existing or hereafter acquired right, title and interest of Trustor in, to, under all buildings, structures, fixtures, additions, extensions and other improvements now or hereafter erected or placed thereon, and all water, water rights and stock, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging now or hereafter used or enjoyed with the Land, or any part thereof, and the reversion and reversions, remainder and remainders thereof, and all other estate, property and rights hereinafter described, including without limitation, (a) all land lying within the bed and/or the right of way of streets, ways, alleys, water courses and roads adjoining the Land, and all access rights and easements pertaining to the Land; (b) all the lands, privileges, water, water rights and stock, air rights, development rights, zoning rights and similar rights, oil and gas rights, royalties, minerals and mineral rights belonging or in any way pertaining to the Land; (c) all fixtures, materials, machinery, fittings and other property now or hereafter attached to or used in the operation of the Land, which shall be deemed part of the real property encumbered hereby and not severable wholly or in part without material injury to the property (including, but not limited to, heating and incinerating apparatus and equipment, boilers, generating equipment, piping and plumbing fixtures, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, carpeting, elevators, escalators, partitions, window shades, blinds, screens, furnishings of public spaces, halls and lobbies, and shrubbery and plants; (d) all existing and future leases, subleases, concessions, licenses, franchises, occupancy agreements or other agreements, written or oral, relating to any use or occupancy of the Property, together with any guaranties of such leases, any security deposits and letters of credit securing performance of such leases, and other security for such leases (all such rights and interests being referred to herein as the "Leases"); (e) all income, profits and revenue from any business conducted on the Property, and all income, proceeds, royalties, rents, issues, revenues and profits from the Leases, including all prepaid rent thereunder, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, all proceeds from any rights and claims of any

kind which Trustor may have against any tenant under the Leases or any occupants of the property, and proceeds payable under any policy of insurance covering loss of rents (all of the above are hereafter collectively referred to as the "Rents"); the term "Rents" shall include minimum rents, additional rents, percentage rents, common area maintenance charges, lease termination payments, purchase option payments, all proceeds payable as a result of a tenant's exercise of an option to purchase the Property, payments in settlement of litigation or under any Lease or in settlement of any dispute regarding rent payments and all payments in lieu of rents including without limitation liquidated damages or other compensation for a tenant's default; (f) any and all rights of Trustor in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property; (g) goods, appliances, equipment, inventory, furniture, furnishings, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the Property; (h) contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the design, construction, supply or installation of the existing or any future improvements or fixtures on the Property, any and all rights of Trustor in, to or under any architect's contracts, engineer's contracts or construction contracts relating to the design or construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith; (i) all trademarks, trade names, copyrights, computer software and other intellectual property used by Trustor in connection with the Property; (j) all proceeds derived from the sale, conveyance or transfer of the Property or any part thereof, including any deposit received by Trustor in the nature of an option payment or earnest money deposit with respect to any prospective transfer of the Property and all proceeds payable as a result of a tenant's exercise of an option to purchase the Real Property, (k) all compensation, awards, damages, causes of action and proceeds (including condemnation and insurance proceeds and any interest on the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding, fire, earthquake or other casualty, injury or decrease in the value of the Property, any claims, causes of action and rights arising from damage to the Property, including without limitation, claims for construction defects, and any refund due on account of payment of real estate taxes, assessments or other charges; (l) all rights now or hereafter held by Trustor as a declarant under any condominium declaration or any declaration of covenants, conditions and restrictions affecting the Property; (m) all contracts and agreements pertaining to or affecting the Property including management and operating agreements; and (n) all additions, accessions, replacements, products, substitutions, and proceeds of any of the foregoing (all of the foregoing interests and rights together with the land hereinabove described are hereinafter collectively referred to as the "Property").

2. **Security Agreement.** Trustor grants to Beneficiary a security interest in that portion of the Property which is not real property to secure payment and performance of all of the Secured Obligations (defined below). This Security Instrument shall constitute a Security Agreement as that term is used in the Utah Uniform Commercial Code as it may be amended from time to time ("UCC") or other law applicable to the creation of liens or security interests in personal property with respect to any of the Property that is not real property but is described herein, or in any way connected with the use and enjoyment of the Property, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as specified in the UCC or at law. Trustor authorizes Beneficiary to file one or more financing statements under the UCC with Trustor as Debtor and Beneficiary as Secured Party (with their addresses as set forth in the preamble of this Security Instrument) to perfect or give public notice of the security interest granted herein. Trustor and Beneficiary agree that the filing of a financing statement in the records normally having to do with personal property shall not be construed as in anywise derogating from or impairing the lien of this Security Instrument. Trustor will immediately notify Beneficiary in writing of any change in (a) Trustor's name, (b) Trustor's business organization, (c) the jurisdiction under which the Trustor's business organization is formed or organized, or (d) the address of Trustor's chief executive office or principal residence or of any additional places of Trustor's business.

3. **Obligations Secured.** This Security Instrument is given for the purpose of securing the following obligations (the "Secured Obligations"):

(a) the payment of the indebtedness (the "Loan") evidenced by a Real Estate Note of even date hereof in the principal amount of \$3,500,000.00 made by Trustor (the "Note"), payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions, renewals, modifications, restatements or substitutions of the Note.

(b) the performance of each agreement of Trustor herein or in the other Loan Documents (but expressly excluding the Environmental Agreement (defined below) and any guaranty of the Loan);

(c) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest as herein provided; and

(d) the payment of such additional loans or advances as hereafter may be made to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Security Instrument.

Notwithstanding anything to the contrary in this Security Instrument, this Security Instrument does not, and shall not be deemed to, secure the separate Environmental Agreement and Indemnity of even date herewith given by Trustor and the guarantor(s) of the Loan with respect to the Property (the "Environmental Agreement").

As used in this Security Instrument, the "Loan Documents" shall mean the Note, this Security Instrument, and the other documents and instruments executed by Trustor evidencing or securing the Loan.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, TO SECURE THE FULL AND TIMELY PERFORMANCE BY TRUSTOR OF ALL OBLIGATIONS, COVENANTS AND AGREEMENTS OF THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, TRUSTOR REPRESENTS, WARRANTS AND COVENANTS AS FOLLOWS:

4. Performance of Obligations. Trustor shall timely pay all sums when due pursuant to the Note and the Loan Documents without deduction or credit for taxes, insurance and other charges paid by Trustor, and strictly comply with all the terms and conditions of the Loan Documents.

5. Warranties

5.1 Warranty of Title. Trustor represents and warrants to and covenants with Beneficiary that (a) Trustor has good and marketable title to an indefeasible fee simple estate in the Land and the improvements thereon, and unencumbered title to the Rents and Leases, (b) the Property is free and clear of any liens, encumbrances, easements, assessments, security interests, claims or defects of any kind, nature or description except those recorded easements, recorded declarations, restrictions, reservations and covenants, if any, that are set forth in the schedule of exceptions to coverage approved by Beneficiary in the title insurance policy insuring Beneficiary's interest in the Property, and real property taxes for the current year, a lien not yet payable (the "Permitted Exceptions"), (c) neither the real property taxes nor any Permitted Exceptions are delinquent or in default, (d) Trustor has the right to convey the Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the personal property security. Trustor will warrant and defend title to the Property and will defend the validity and priority of the lien of this Security Instrument and the security interest granted herein against any claims or demands, except for the Permitted Exceptions.

5.2 Warranties Regarding Leases. Trustor represents and warrants to and covenants with Beneficiary that (a) Trustor has performed all of the material covenants of Trustor as landlord under the Leases; (b) all of the existing Leases are to the best of Trustor's knowledge valid and enforceable according to their terms in all material respects, are in full force and effect and are unmodified except as disclosed in writing to Beneficiary; (c) Trustor has the right to assign its rights under the Rents and Leases to Beneficiary as security for the Secured Obligations; (d) Trustor has made no prior assignment of the Rents or Leases except as security for indebtedness that has been fully repaid as of the date hereof, and (e) Trustor has not collected any of the Rents due and owing under the Leases more than one month in advance of their due date (except as may be consistent with prudent property management practices for multifamily residential properties).

6. Prohibited Liens. Trustor shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real property taxes and assessments not yet due and liens expressly permitted by the Loan Documents. Trustor shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof, or its interest as lessor under the Leases except pursuant to this Security Instrument. Trustor shall have the right to contest any mechanic's and materialmen's liens on the Property in good faith by appropriate proceedings so long as (a) no Event of Default (as defined hereinafter) has occurred and is continuing; (b) Trustor posts any bond or other security as and when required as a condition of pursuing such contest; (c) Trustor commences such contest prior to such lien becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such bond stays the foreclosure and enforcement of such lien; and (e) Trustor pays any lien within ten (10) days following the resolution of such contest. If Beneficiary is named as a party in any suit to foreclose a lien described herein then Trustor shall pay all costs and fees incurred by Beneficiary in defending such suit.

7. Payment of Fees, Taxes and Other Liens and Assessments; Contest. Trustor shall pay all filing, registration and recording fees, and other fees, taxes, duties, imposts, and other charges incident to, arising from, or in connection with the making, disbursement and administration of the Loan and the preparation, execution, delivery or recording of any Loan Document. Trustor shall also pay or cause its tenants to pay the real property taxes and any assessments with respect to the Property prior to delinquency unless otherwise expressly agreed to in writing by Beneficiary. After timely notice to Beneficiary, Trustor shall have the right to contest any real property tax or special assessment on the Property by appropriate proceedings diligently pursued so long as (a) no Event of Default has occurred; (b) Trustor makes any payment or deposit or posts any bond as and when required

as a condition of pursuing such contest; (c) Trustor commences such contest prior to such tax or assessment becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such contest or any bond furnished by Trustor stays the foreclosure and enforcement of any lien securing the payment of any such tax or assessment; and (e) Trustor pays any tax or assessment within ten (10) days following the resolution of such contest. All other encumbrances, charges, fees, and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Security Instrument, shall be paid when due and shall not be in default beyond any applicable notice and cure period. On request, Trustor shall furnish to Beneficiary receipts or other evidence of payment of these items satisfactory to Beneficiary.

8. Maintenance; No Waste. Trustor shall protect and preserve the Property and maintain it in good condition and repair, ordinary wear and tear from proper use alone excepted. Trustor shall not commit or permit any waste of the Property, or suffer or permit any condition to exist which will (i) increase the risk of fire or other hazard to the Property, or (ii) invalidate or allow cancellation of any insurance policy covering the Property. Trustor shall perform all of Trustor's material obligations under any declarations, covenants, bylaws, rules or other documents governing the use, ownership or occupancy of the Property.

9. Alterations, Removal and Demolition. Trustor shall not, nor permit tenants or others to, demolish any building on the Property or alter any foundations or exterior walls of such buildings without Beneficiary's prior written consent. Trustor shall not remove any fixture or other item or property which is part of the Property and the removal of which would materially adversely affect the value of the Property, without Beneficiary's prior written consent unless the fixture or item of property is immediately replaced by an article of equal value and utility owned by Trustor free and clear of any lien or security interest, unless such item is no longer reasonably necessary for the efficient use and operation of the Property as currently used.

10. Completion, Repair and Restoration. Trustor shall, at its sole cost, promptly complete or repair and restore in good workmanlike manner, lien-free and in compliance with all applicable laws and permits, any building or improvement on the Property which may be constructed or damaged or destroyed. Notwithstanding the foregoing, if the damage or destruction is the result of an insured casualty, if no Event of Default has occurred and is continuing, and if Beneficiary has exercised any option it may have under Section 21 hereof to apply for a purpose other than rebuilding any portion of the insurance proceeds paid by reason of the casualty, then Trustor's obligation to repair or rebuild shall be limited to such repair and rebuilding as may reasonably be accomplished with such insurance proceeds as are made available to Trustor plus the deductible amounts on the applicable insurance policies.

11. Compliance with Laws. The Land is zoned for Trustor's proposed use, and is in present compliance with all zoning and subdivision laws, regulations, codes, rules, and ordinances applicable thereto. Trustor shall assure that at all times the Land constitutes one or more legal lots capable of being conveyed without violation of any subdivision laws, ordinances, regulations, codes, rules, or other applicable laws relating to the division or separation of real property. Trustor shall comply with all laws, ordinances, codes, rules, regulations, covenants, conditions, declarations, and restrictions affecting the Property and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, declarations, and restrictions. Without limiting the generality of the foregoing, Trustor represents and covenants that to Trustor's actual knowledge, the Property is in present compliance with, and at all times shall fully comply with, as applicable, the Americans With Disabilities Act of 1990 (42 USC 12101, et seq.), as amended from time to time, and the rules and regulations adopted pursuant thereto.

12. Impairment of Property; No Condominium. Trustor shall not, without Beneficiary's prior written consent, change the general nature of the use of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the value of the Property or Beneficiary's lien or security interest in the Property. In addition, Trustor will not subject the Property or any portion thereof to a condominium regime or structure without the written consent of Beneficiary, which consent may be granted or denied in Beneficiary's sole discretion and, if granted, may be subject to such requirements as Beneficiary may impose including but not limited to Trustor providing Beneficiary with such title insurance endorsements and other documents as Beneficiary may require.

13. Inspection of Property. Beneficiary or its authorized representative shall have the right to inspect the Property and its condition and use at all reasonable times after reasonable notice to Trustor, subject to the rights of tenants of the Property.

14. Trustor's Defense of Property. Trustor shall appear in and defend (with counsel reasonably satisfactory to Beneficiary) any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee.

15. Beneficiary's Right to Protect Property. Beneficiary may (but is not obligated to) commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee if Trustor fails to undertake such actions after reasonable notice from Beneficiary. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien which in its judgment appears to be prior or superior to the lien of this Security Instrument and Trustor shall promptly reimburse Beneficiary therefor. If Trustor fails to make any payment or do any act required under the Loan Documents, including without limitation, payment of taxes and assessments and maintenance of insurance on the Property, Beneficiary, without any obligation to do so, but without releasing Trustor from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect Beneficiary's interest in the Property. Beneficiary is authorized to enter upon the Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its reasonable discretion, it deems necessary, all of which shall be payable by Trustor and be secured by this Security Instrument.

16. Repayment of Beneficiary's Expenditures. Trustor shall pay within 10 days after written notice from Beneficiary all sums expended by and all costs and expenses incurred by Beneficiary in taking any actions or exercising any remedies pursuant to the Loan Documents or in responding to any subpoena or other discovery request relating in any way to Beneficiary's status as holder of this Security Instrument or to the process of closing or administering the Loan, including without limitation reasonable attorneys' fees, appraisal and inspection fees, and the costs of title reports. Expenditures and advances by Beneficiary shall bear interest from the date of such advance or expenditure at the rate specified in the Note (which shall be the default rate thereunder if an Event of Default is then pending, shall constitute advances made under this Security Instrument and shall be secured by and have the same priority as the lien of this Security Instrument. If Trustor fails to pay any such expenditures, advances, costs and expenses and interest thereon, Beneficiary may, at its option, without foreclosing the lien of this Security Instrument, commence an independent action against Trustor for the recovery of the expenditures, costs, and advances, and may disburse any undisbursed loan proceeds to pay such costs, advances and expenditures.

17. Due on Sale or Transfer; Change of Control.

17.1 General Rule – Prohibition on Conveyance or Change of Control. Trustor understands that Beneficiary will have the opportunity to examine, and is entitled to rely upon, the creditworthiness, financial strength, reputation, experience and managerial ability of Trustor (and its owners and managers) with respect to owning, leasing and operating the Property, in approving the Loan to Trustor, and will continue to rely on Trustor (and its owners and managers) as a means of preserving the value of the Property as security for the Loan. If (i) the Property or any part thereof or interest therein is conveyed, transferred, leased (other than a space lease without option to purchase), assigned, or otherwise alienated (each a "Conveyance"), or (ii) there is a Change of Control (defined below) of Trustor without the prior written consent of Beneficiary, then, except as otherwise expressly provided below, and regardless of whether or not an Event of Default shall otherwise have occurred and be continuing, such event shall constitute an Event of Default, and Beneficiary may, at its option, declare the then outstanding principal balance evidenced by the Note plus accrued interest thereon, and any applicable late fee or prepayment fee or premium, immediately due and payable. In the case of a Trustor that is a revocable trust, the revocation of such trust shall be deemed a Change of Control for purposes hereof. Any joint venture agreement, partnership agreement, declaration or revocation of trust, real estate installment sale contract, option agreement or other agreement (other than a space lease without option to purchase) whereby any other person or entity other than Trustor may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits of the Property, shall, in each case, be deemed to be a Conveyance or Change of Control for the purposes of this paragraph, and shall require prior written consent from Beneficiary. Any request to Beneficiary for approval of a Change of Control shall be accompanied by copies of any proposed transfer instruments and a processing fee to Beneficiary in the amount specified below. If Trustor is a partnership, Trustor will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Beneficiary. The withdrawal or expulsion of any general partner from Trustor partnership shall not in any way affect the liability of the withdrawing or expelled general partner for all obligations of Trustor hereunder or under the Note. If Trustor consists of more than one person or entity who hold title to the Property as tenants in common, no tenancy-in-common agreement or similar agreement governing the rights and obligations of the owners with respect to the Property that may be recorded against the Property as of the date hereof or hereafter, or of which Beneficiary otherwise has knowledge, shall in any way limit or impair Beneficiary's rights under this Deed of Trust, including without limitation Beneficiary's rights upon any transfer of any fee interest in any portion of the Property. Trustor hereby waives any right of partition with respect to the Property and covenants not to file any action for partition of the Property until all of the Secured Obligations are paid in full.

17.2 "Change of Control" Defined. Except as otherwise expressly provided herein, a "Change of Control" for purposes hereof means the transfer over the term of the Loan of more than 49% of the equity interests, directly or indirectly, in Trustor (but excluding any transfers described in Section 17.3 below), or any change in the identity of the general partner(s) of any general or limited partnership that is the Trustor. If Trustor consists of more than one entity, such 49% limitation shall apply to each such entity. If Trustor is a natural person and dies, the transfer of the Property because of such death shall not be deemed a Conveyance for purposes hereof provided that Beneficiary is promptly notified of such death and within ninety (90) days after written request by Beneficiary, one or more other persons or entities having credit standing and financial resources equal to or better than those of the decedent, as determined by Beneficiary in its reasonable discretion, and management abilities satisfactory to Beneficiary shall assume the Loan, by executing and delivering to Beneficiary an assumption agreement satisfactory to Beneficiary, providing Beneficiary with recourse substantially identical to that which Beneficiary had against the decedent and granting Beneficiary liens on any and all interests of the decedent in the Property; provided further that (i) Beneficiary shall be provided, at Trustor's expense, with a title endorsement as required below in connection with an assumption of the Loan, and (ii) Beneficiary shall be paid an administrative fee in the amount of \$3,000. If Trustor is one or more trustees acting on behalf of a trust, a change in the make-up of the trustees of the trust as the result of death or resignation shall not constitute a Conveyance or Change of Control requiring written consent of Beneficiary. However, the transfer of part or all of the interest of the trust in the Property to any third party pursuant to the dispositive provisions of the trust shall be subject to Beneficiary's approval, which shall not be unreasonably withheld provided that Beneficiary is provided with copies of any deed or other conveyance instrument; Beneficiary is provided at Trustor's expense with an endorsement to its title policy insuring that the transfer of title does not affect the validity or priority of the lien of this Mortgage; the transferee of title to the Property executes and delivers to Beneficiary an assumption agreement with respect to the Loan in form and content satisfactory to Beneficiary, and Beneficiary is paid an administrative fee of \$2,500.

17.3 Transfer of Interest for Estate Planning Purposes. Natural persons may, for estate planning purposes, transfer their direct or indirect interest in Trustor (other than general partnership interests), notwithstanding that such transfer may be of a Change of Control, if such transfer is to immediate family members or lineal descendants, or to entities controlled by or trusts for the benefit of, immediate family members or lineal descendants of the transferor, provided each of the following conditions have been satisfied: 1) There have been no Events of Default, 2) Beneficiary receives written notice of the transfer along with all appropriate documentation of the transfer satisfactory to Beneficiary within 30 days after the transfer, 3) the liability of Trustor under the Note and of any guarantors under their guaranty of Trustor's obligations shall remain in full force and effect, 4) managerial control over the Property and the Trustor shall remain acceptable to Beneficiary; and 5) Trustor shall pay all of Beneficiary's reasonable out of pocket costs associated with the transfer plus a \$500 administrative fee.

17.4 Death of Guarantor or General Partner. The death of (i) a natural person who is a guarantor of the Loan whether or not such person owns any interest in Trustor, or (ii) a general partner of a partnership that is the Trustor, shall constitute an Event of Default under the Loan, unless in the case of (i), the obligations of such decedent are assumed in writing by a replacement guarantor satisfactory to Beneficiary no later than the earlier of (a) the date on which the first distribution of the decedent's assets has been made from such person's estate or trust to any devisee, heir or beneficiary, or (b) ninety (90) days after such guarantor's death, or in the case of (ii), Beneficiary must be satisfied with any replacement general partner, in terms of such general partner's management experience and creditworthiness, or Beneficiary must otherwise be provided with a new guaranty from a satisfactory guarantor in substitution for the obligations of the deceased general partner. Beneficiary will not unreasonably withhold its consent to a replacement guarantor or replacement general partner whose creditworthiness, liquidity and financial strength satisfy Beneficiary's then-applicable underwriting standards. In addition, Beneficiary will not unreasonably withhold its consent to an additional extension of 90 days to the 90 day period referenced above for the delivery of a satisfactory replacement guaranty upon the death of a guarantor. Any change in the day-to-day management of the Property or of Trustor resulting from a death as described herein shall be subject to Beneficiary's approval. Trustor shall pay all of Beneficiary's reasonable out of pocket costs associated with the foregoing transaction plus an administrative fee of \$1,000.

17.5 Other Transfers of Interest on Death. The transfer, on the death of a natural person, of an interest in Trustor, whether or not such transfer would otherwise be a Change of Control, where such person is not the Trustor or a Guarantor or a general partner of Trustor, shall not constitute a Change of Control or require the notification to or consent of Beneficiary, or payment of any fee.

17.6 No Discharge of Obligated Parties. No Conveyance or Change of Control or other transfer of any interest in the Property shall operate to discharge or diminish in any way the liability of Trustor or any guarantor with respect to the Loan Documents except as otherwise expressly provided herein.

17.7 Assumption of Loan. Notwithstanding the foregoing provisions of this Section 17, and provided no Event of Default has occurred, Trustor shall have a one-time only right upon prior written notice to Beneficiary and payment of all

Beneficiary's expenses plus an assumption fee equal to one percent (1%) of the original principal amount of the Note to convey the entire interest in the Property held by all persons comprising Trustor to a transferee whose creditworthiness, financial strength, reputation, experience and property management ability with respect to the ownership, operation and leasing of properties similar to the Property (together with that of any new proposed guarantors of the Loan) satisfy Beneficiary's then-applicable underwriting standards, which approval shall not be unreasonably withheld or delayed. If Beneficiary withholds its approval because of the proposed transferee's or proposed new guarantors' lack of creditworthiness, reputation, experience, property management ability or financial strength or other reasonable basis which leads Beneficiary to reasonably believe the Loan or the security would be impaired, Beneficiary shall not be deemed to have unreasonably withheld its approval. Any transferee must fully assume Trustor's obligations under the Note, the Loan Documents and the Environmental Agreement, and Trustor and any guarantors of the Loan shall remain fully bound after the transfer; provided that upon Beneficiary's approval of a conveyance of the Property to a transferee unaffiliated with Trustor, Beneficiary's acceptance of any required replacement guaranty(ies) and the assumption of the Loan as provided herein, Trustor and any guarantors shall be released from liability for repayment of the Loan. Trustor shall pay for an endorsement to Beneficiary's title policy insuring that this Security Instrument remains a first and prior lien on the Property and shall pay all expenses and fees, including outside counsel legal fees, incurred in connection with the transfer and assumption. Any approval given by Beneficiary shall not constitute approval of any other or future Conveyance or Change of Control. If ownership of the Property or any part thereof or interest therein becomes vested in a person or an entity other than Trustor, whether or not Beneficiary has given written approval, Beneficiary may deal with such successor or successors in interest with reference to this Security Instrument and the Loan, in the same manner as with Trustor, without in any way diminishing or discharging Trustor's obligations. In addition to the loan assumption fee payable upon an approved conveyance of the Property and assumption of the Loan, Trustor shall pay to Beneficiary a processing fee in the amount of \$3,500.00 in consideration of, and as a precondition to, the review by Beneficiary of the proposed conveyance and assumption. Such sum is payable regardless of whether Beneficiary ultimately approves the proposed transfer and is in addition to any loan assumption fee payable upon the closing of an assumption transaction. As a condition of approval of any request for a loan assumption, Trustor shall provide evidence satisfactory to Beneficiary that any tenant with a right of first refusal to acquire the Property has waived such right with respect to the proposed transfer.

18. No Other Encumbrances; Due on Encumbrance. At no time while the Loan remains unpaid shall Trustor create, assume, or suffer to exist on the Property, or any part thereof, any mortgage, trust deed or other security instrument in favor of any person other than Beneficiary (an "Encumbrance") without first obtaining the prior written consent of Beneficiary. Trustor agrees that should the Property or any part thereof at any time be or become subject to the lien of any other mortgage or Security Instrument or subject to any other voluntary encumbrance, pledge, or security interest (except with the prior written consent of Beneficiary), the whole of the principal and interest secured hereby and any applicable delinquency charge or prepayment fee shall, at the option of Beneficiary, become immediately due and payable. Whether or not the consent of Beneficiary has been obtained, Trustor, for itself and for all future owners of the Property, agrees that this Security Instrument and the other Loan Documents may be modified, varied, extended, renewed, or reinstated at any time by agreement between the holder of this Security Instrument and Trustor, or the then owner of the Property, without notice to, or the consent of, any subordinate mortgagee or lienor, and any such modification, variance, extension, renewal, or reinstatement shall be binding upon such subordinate mortgagee, Beneficiary or lienor with the same force and effect as if such subordinate mortgagee, Beneficiary or lienor had consented thereto.

19. Insurance. Without limiting the generality of any other provision contained in this Security Instrument, Trustor shall procure and continuously maintain while the Loan remains unpaid and this Security Instrument remains in effect "all risk" property insurance covering all improvements on the Property providing 100% replacement cost coverage on an agreed amount basis to remove any co-insurance provision, insuring against loss by fire, smoke, explosion, riot, lightning, hail, wind, windstorm, vandalism and other risks covered by the broadest form of extended coverage available from time to time, loss of rents (or business income, if owner occupied) coverage in amounts sufficient to compensate Trustor for all rents or income from the Property during a period of not less than one year, and earthquake coverage to the extent required by Beneficiary in the exercise of its business judgment in light of commercial real estate practices by institutional lenders lending against real property in the general vicinity where the Property is located at the time the insurance is issued, and coverage for such other perils and risks as may be reasonably required by Beneficiary from time to time. If the Property are ever designated as having special flood hazards or any other designation which would make the Property subject to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, modified, supplemented, or replaced from time to time, or any similar law, Trustor agrees to do everything reasonably necessary to comply with the requirements of said law and related regulations in order that flood insurance will be available to Trustor, and to obtain and maintain for the benefit of Beneficiary such an insurance policy with limits and deductibles satisfactory to Beneficiary. Trustor shall also procure and maintain Occurrence Form

commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about, or resulting from, the Property or Trustor's use and occupancy of the Property with limits in such amounts as are acceptable to Beneficiary, but in no event less than \$1,000,000 combined single limit per occurrence for loans up to \$5,000,000, or \$2,000,000 for loans of \$5,000,000 or more, provided that for hotels and senior living facilities, the combined single limit per occurrence shall be not less than \$5,000,000 regardless of loan size; and \$2,000,000 general aggregate (or \$5,000,000 general aggregate for hotels or senior living facilities), naming Beneficiary as an additional insured on a primary/non-contributory basis (with endorsement CG2018 or equivalent). All insurance shall be with companies licensed to do business and admitted in Utah satisfactory to Beneficiary having an A.M. Best rating of A- or better with limits acceptable to Beneficiary, and a Beneficiary's Loss Payable endorsement (form CP1218 or equivalent) in favor of and in form satisfactory to Beneficiary and deductibles not to exceed \$25,000 for loans up to \$5,000,000 or \$100,000 for loans in excess of \$5,000,000. Each policy must provide no less than thirty (30) days prior written notice to Beneficiary of any cancellation, non-renewal or material change (or ten (10) days in the case of a cancellation for nonpayment of premiums). No approval by Beneficiary of the amount, type or form of any insurance shall be construed as a representation or warranty by Beneficiary of its sufficiency for Trustor's purposes. Trustor shall pay all premiums for the insurance coverage required hereunder in a timely manner. At least thirty (30) days prior to the expiration of the term of any insurance policy, Trustor shall furnish Beneficiary with written evidence of renewal or issuance of a satisfactory replacement policy. If requested, Trustor shall deliver copies of all policies to Beneficiary. In the event of foreclosure of this Security Instrument all interest of Trustor in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Beneficiary. If Trustor fails to maintain insurance in accordance with this Security Instrument, Beneficiary may, but need not, obtain insurance to protect Beneficiary's interest in the Property ("**Force Placed Insurance**"). For instance, and without limiting Beneficiary's rights hereunder and under the other Loan Documents, Beneficiary may obtain Force Placed Insurance if: (a) Trustor fails to deliver to Beneficiary, prior to the expiration of any such required insurance coverage, evidence satisfactory to Beneficiary that Trustor has renewed or replaced such coverage; (b) the amount of insurance is reduced below Beneficiary's requirements; (c) the deductible is increased above Beneficiary's requirements; or (d) the insurer providing the insurance does not meet Beneficiary's insurance company rating requirements.

20. Insurance Proceeds. All insurance proceeds (including but not limited to proceeds of policies of insurance that Beneficiary does not require Trustor to carry) with respect to the Property are hereby assigned to Beneficiary (all such assigned items constituting part of the "Property" for purposes hereof) as additional security for the Loan. Trustor shall give immediate notice to Beneficiary of any loss or damage to the Property due to casualty in excess of \$25,000 (a "**Material Loss**"). Provided no Event of Default has occurred and is continuing, Trustor shall have the right to settle and receive the proceeds payable with respect to a loss or damage except for a Material Loss, and shall with reasonable promptness apply any funds so received to the repair and reconstruction of the damage. All proceeds payable with respect to a Material Loss shall be paid to Beneficiary and applied to repair or restore the Property, provided no Event of Default has occurred and is continuing; such repair or restoration is economically feasible; the security of this Security Instrument is not impaired; and at least one year remains on the unexpired term of the Note. If the foregoing conditions are not satisfied, Beneficiary shall, at its option, after deducting its expenses including reasonable attorneys' fees, (a) apply all or part of the proceeds against the sums owed under the Loan Documents including the Note whether or not (i) the sums are actually then due or (ii) Beneficiary's security is impaired, and without affecting the due dates or amount of payments thereafter due under the Note, or (b) release all or any part of the proceeds to Trustor, or (c) permit all or any part of the proceeds to be used for repair and restoration of the Property on such conditions as Beneficiary may impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds (and of any additional funds Beneficiary requires Trustor to deposit with Beneficiary for disbursement to pay the costs of the repair and restoration) during the course of repair and restoration. Beneficiary's security will be deemed to be impaired if Trustor fails to comply with such conditions in any material respect. Trustor agrees to pay Beneficiary's costs and reasonable attorneys' fees incurred in connection with the collection and administration of any insurance proceeds as provided herein. Except when an Event of Default is then pending, any application of the insurance proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of insurance proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of installments due under the Note, absent express agreement of Beneficiary to the contrary. No application of insurance proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

21. Condemnation Proceeds. All awards, payments, damages (whether direct, consequential or otherwise), claims and proceeds thereof in connection with any condemnation or eminent domain proceeding affecting the Property, or for conveyance in lieu of condemnation (collectively, a "**Condemnation Proceeding**"), are hereby assigned to Beneficiary (all such assigned items constituting part of the "Property" for purposes hereof) as additional security for the Loan. Trustor shall give immediate notice to Beneficiary of any Condemnation Proceeding, and Trustor will appear in and prosecute any such proceeding unless otherwise directed by Beneficiary in writing. If an Event of Default has occurred and is continuing at the time of

commencement of the Condemnation Proceeding, then Trustor hereby irrevocably empowers Beneficiary, in the name of Trustor, as Trustor's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all claims with respect to such Proceeding; provided, however, Beneficiary shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. In addition, whether or not an Event of Default has occurred and is continuing, Beneficiary may, at its option, appear in and participate in any Condemnation Proceeding in Beneficiary's own name, through counsel of its choice. Trustor shall deliver to Beneficiary at Trustor's expense such documentation and information regarding the Condemnation Proceeding, its impact on the Property and Trustor's position with respect thereto as Beneficiary may reasonably request from time to time, including without limitation survey maps showing the portions of the Property affected by the Condemnation Proceeding, in order to enable Beneficiary to exercise its rights hereunder in connection with such Condemnation Proceeding.

All awards payable pursuant to the Condemnation Proceeding shall be paid to Beneficiary for application as provided herein. If Trustor receives any such awards directly from a condemning authority, Trustor shall deliver the same to Beneficiary forthwith and, until such delivery, shall hold the same in trust for Beneficiary pending disposition as provided herein. Beneficiary shall, after deducting its expenses including reasonable attorneys' fees incurred in such proceedings and otherwise in the collection of the proceeds, make such net proceeds (the "**Net Claims Proceeds**") available to Trustor (subject to the terms of the following paragraph) to repair and reconstruct the Property, provided all of the following conditions (the "**Proceeds Release Conditions**") are satisfied: (i) no Event of Default has occurred and is continuing; (ii) Trustor establishes to Beneficiary's satisfaction that the Property can be restored to a value, usefulness and physical condition in all material respects comparable to its condition immediately prior to the taking; (iii) Beneficiary shall have determined that the Net Claims Proceeds are sufficient to pay the total cost of repair or reconstruction (the "**Repair Costs**"), or Trustor shall have deposited with Beneficiary sufficient additional funds from separate resources to meet any shortfall between the Net Claims Proceeds and the reasonably estimated Repair Costs (the "**Trustor Deposit**"); (iv) Beneficiary shall have approved the plans and specifications, permits, construction contract, construction budget and schedule, and the selection of the architect, engineer and contractor for the repair and reconstruction work, with such approval not to be unreasonably withheld; and (v) Beneficiary shall otherwise be fully satisfied that the security of this Security Instrument and Trustor's ability to perform its obligations hereunder and under the other Loan Documents is not impaired by reason of the taking. Trustor shall perform any required repairs in compliance with Section 10 of this Security Instrument. If any of the Proceeds Release Conditions are not satisfied within a reasonable time (as reasonably determined by Beneficiary), then Beneficiary may apply the Net Claims Proceeds to the Secured Obligations in such order as Beneficiary may determine, whether then due and payable or not. Except when an Event of Default is then pending, any such application of the Net Claims Proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of Net Claims Proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of installments due under the Note, absent express agreement of Beneficiary to the contrary. No application of Proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

If the Proceeds Release Conditions are satisfied but the total amount of the Net Claims Proceeds exceeds \$25,000, then Beneficiary may, at its option, hold or cause an independent third party escrow holder to hold such proceeds (together with any required Trustor Deposit) in an account for disbursement to Trustor to pay the Repair Costs (with any third party escrow fees being borne by Trustor) according to such reasonable disbursement procedures as Beneficiary may impose to assure that all repair and reconstruction work will be completed lien free, with reasonable diligence, in accordance with all applicable laws and permits and in conformity with any plans, specifications and contracts approved by Beneficiary. If the actual Repair Costs are less than the Net Claims Proceeds, then upon completion of all required repair and reconstruction of the Property, and provided that no Event of Default has occurred and is continuing and that the value of the Property has not been materially impaired by reason of the taking, then any such surplus proceeds shall be released to Trustor. Otherwise, such surplus proceeds may be applied by Beneficiary for application against the outstanding balance of the Secured Obligations.

In addition, if the Proceeds Release conditions are satisfied but Beneficiary reasonably determines that work to be carried on in rights of way or other properties adjacent to the Property as part of the public project that is the basis of the Condemnation Proceeding may reasonably be expected to temporarily disrupt the business operations on the Property and accordingly impair the ability of the Property to generate the income necessary to pay the interest and principal as it comes due under the Note, and to pay all required expenses of operating and maintaining the Property as required hereunder and under the other Loan Documents, Beneficiary may hold or cause an independent third party escrow holder to hold the Net Claims Proceeds or such portion thereof as Beneficiary reasonably determines to be necessary as additional security for the Secured Obligations,

and/or as a fund for the payment of debt service on the Loan, with provisions for the release of such funds at a reasonable time when the Property's ability to generate the income is no longer impaired.

Trustor agrees to pay all Beneficiary's costs and reasonable attorneys' fees incurred in connection with any actions taken by Beneficiary pursuant to this Section.

22. Leases.

22.1 Performance, Preservation and Enforcement of Leases. Trustor shall fully comply with all of the material terms, conditions and provisions of the Leases so that no breach shall occur on the part of Trustor, and shall do all that is reasonably necessary to preserve all the Leases in force. Trustor shall enforce in a commercially reasonable manner the performance in all material respects of all obligations of the tenants under the Leases. Trustor shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof or its interest as lessor of the Leases except the lien of this instrument. Trustor shall maintain all security deposits collected from tenants with respect to their Leases in accordance with all applicable legal requirements. Except for the lien of real property taxes and assessments, Trustor shall not permit any lien to be created against the Property which may be or may become prior to any Lease.

22.2 Prior Approval for Trustor Actions under Leases. Without the prior written consent of Beneficiary, Trustor will not pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents to anyone other than Beneficiary. In addition Trustor will not, without the prior written consent of Beneficiary (except as may be consistent with prudent property management practices for multifamily residential properties), do any of the following:

(a) receive or collect any Rents from any present or future tenant of the Property for a period of more than one (1) month in advance of the date on which such payment is due;

(b) waive, discount, compromise, or in any manner release or discharge any tenant under any such Lease, and from any obligations of the tenant or guarantor, including the obligation to pay the Rents as required under the Leases, or consent to any surrender of any such Lease;

(c) except in accordance with the terms of the Lease providing for termination or other remedies in the event of default by a tenant, cancel or terminate any Lease; or

(d) modify a Lease in a way that would materially negatively affect the value of Trustor's interest in the Leases and Rents.

22.3 Copies of Leases. Until the indebtedness secured hereby shall have been paid in full, Trustor shall make available to Beneficiary, upon request, for review and copying at reasonable times, executed copies of (i) any renewals or amendments of existing Leases and (ii) all future Leases upon all or any part of the Property, and (iii) any transfers and assignments of such Leases or subleases of space under any Lease.

22.4 Indemnification. Trustor shall indemnify, defend and hold Beneficiary harmless from any and all liability, loss, injury, damage or expense which Beneficiary may incur under or by reason or in defense of any and all losses, damages, claims, expenses, causes of action and demands whatsoever which may be asserted against Beneficiary arising out of the Leases (a "Lease Claim"), including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Trustor, but not delivered to Beneficiary and any Lease Claim arising from any other actions by Trustor that require the consent of Beneficiary under Section 22.2 hereof where such action was undertaken without such consent.

23. Assignment of Leases and Rents; Trustor's Revocable License to Collect. Trustor hereby absolutely and irrevocably assigns to Beneficiary all of Trustor's interest in the Rents and Leases. So long as no Event of Default has occurred, Trustor shall have a revocable license granted by Beneficiary to collect (but not prior to accrual) the Rents as they become due. Trustor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents before using the Rents for any other purposes. Trustor covenants that it will make no subsequent assignment of the Rents (or any portion thereof) without the prior written consent of Beneficiary. Trustor's license to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

24. Beneficiary's Right to Collect Rents. If an Event of Default occurs, Beneficiary or its agents, or a court appointed receiver, without further notice to Trustor, may collect the Rents without further notice to Trustor. In doing so, Beneficiary may (a) evict tenants for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any tenant for past due rent. In addition, upon an Event of Default, Beneficiary may require Trustor to transfer all security deposits under the Leases with Beneficiary. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to

Beneficiary, a receiver or an agent, operating expenses for the Property (including the funding of reasonable reserves for capital replacements) and any sums due or payments required under the Loan Documents, in such amounts as Beneficiary may determine. Any excess Rents shall be paid to Trustor, however, Beneficiary may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection or application of the Rents shall not cure or waive any Event of Default. Beneficiary or a receiver shall have no obligation to perform any of Trustor's obligations under the Leases, nor to assume any responsibility for any security or other deposits delivered to Trustor by any tenant and not delivered to Beneficiary. In exercising its rights under this section Beneficiary shall be liable only for the proper application of and accounting for the Rents actually collected by Beneficiary or its agents. Any Rents paid to Beneficiary or a receiver shall be credited against the amount due from the tenant under the Lease. In the event any tenant under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the leases assigned hereby, Trustor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check in payment of damages for rejection or termination of any such Lease will be made payable to both the Trustor and Beneficiary; and Trustor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to the Loan in such manner as Beneficiary may elect. The application of such proceeds against the balance owed under the Loan Documents shall be without imposition of any prepayment fee provided no Event of Default is pending at the time of such application. Notwithstanding any other provision set forth herein, in the Note, or in any other document executed or delivered in connection with the Loan, Trustor's and Beneficiary's rights and remedies with respect to the Rents and Leases are subject to and governed by the Utah Uniform Assignment of Rents Act set forth in Utah Code Annotated Sections 57-26-101 et seq. now in effect, as amended from time to time.

25. **Trustor Existence.** If Trustor is a trust, corporation, partnership, limited liability company or other entity, Beneficiary is making the Loan in reliance on Trustor's continued existence, ownership and control in its present form. Trustor will not alter its name, jurisdiction of organization, or type of legal entity without the prior written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed, and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. Trustor shall do all things reasonably necessary to preserve its existence in force and to preserve all franchises, rights and privileges granted by the laws under which it is organized.

26. **Fixture Filing.** To the extent permitted by applicable law, this Security Instrument shall also serve as a financing statement filed for record in the real estate records as a fixture financing statement pursuant to the UCC covering any Property which is now or may hereafter become fixtures with respect to the Property. For the purpose of this fixture filing, Trustor shall be the "Debtor" and Beneficiary shall be the "Secured Party" and the addresses of Trustor and Beneficiary are as set forth in the preamble of this Security Instrument, and the collateral shall be any fixtures on the Property. Trustor is the record owner of the Land.

27. **Default; Remedies.** TIME IS OF THE ESSENCE HEREOF. Any of the following events shall constitute an "Event of Default:"

(a) Trustor fails to pay all indebtedness evidenced by the Note on the maturity date thereof as specified in the Note, or fails to pay any monthly installment of principal or interest on the Note within ten (10) days after the date the same is due and payable, or

(b) Trustor fails to pay when due any taxes or assessments on the Property, or

(c) any representation or warranty made by Trustor or any guarantor of the Note was materially false or misleading at the time it was made, or Trustor or any guarantor fails to disclose any material fact known to Trustor or such guarantor relating to Trustor, such guarantor or the Loan, or

(d) Trustor fails to provide or continuously maintain the insurance required by this Security Instrument, or

(e) Trustor fails to perform or observe any other obligation of Trustor to Beneficiary within the applicable notice and cure period set forth herein or in another Loan Document, or

(f) (i) Trustor files or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (ii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against Trustor and any of the above described in this clause (f)(ii) is not dismissed within sixty (60) days,

(g) (i) any guarantor of the Loan revokes, or attempts to revoke, its guaranty, or (ii) such a guarantor files or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (iii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against such Guarantor and any of the above described in this clause (g)(iii) is not dismissed within sixty (60) days or

(h) a Conveyance or Encumbrance has occurred without the prior written consent of Beneficiary, or

(i) a Change of Control has occurred with respect to Trustor or any guarantor without the prior written consent of Beneficiary, or

(j) the death of a general partner of Trustor or a guarantor except as otherwise provided in Section 17 hereof; or

(l) Trustor fails to perform or observe any other covenant or agreement of Trustor contained in this Security Instrument or in the other Loan Documents and not specifically described in this section, and such failure continues for more than thirty (30) days after receipt of written notice from Beneficiary specifying such default; provided, if such default is curable but not reasonably curable within thirty days, then Trustor shall have such additional time, not to exceed ninety (90) days in the aggregate from the date of Beneficiary's notice, in which to effect such cure, provided Trustor commences the cure within the initial thirty-day period and diligently prosecutes such cure to completion.

Upon an Event of Default, the whole sum of the indebtedness, at the option of the Beneficiary or the holder of the indebtedness, shall become immediately due and payable and Beneficiary may exercise its rights and remedies under the Loan Documents and applicable law. Beneficiary may cause Trustee to execute a written notice of default and of election to cause said Property to be sold to satisfy the indebtedness and obligations hereof, and Trustee shall file such notice of record in each county wherein said Property or some part or parcel thereof is situated. Beneficiary shall deposit with Trustee the Note and all other documents evidencing expenditures secured hereby. After lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such Property, if consisting of several 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 he deems 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 by written notice or oral postponement, at the time and place last appointed for the sale; provided, if the postponement exceeds 45 days, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its deed conveying said Property so sold, but without any covenant or warranty, expressed or implied. The recitals in this deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on the Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest thereon at the default rate specified in the Note from the date of the expenditure; (4) all sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or to the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place. Trustor agrees to surrender possession of the Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor. Upon the occurrence of any default, the Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys fee in such amount as may be fixed by the court. Beneficiary's exercise of any of its rights and remedies shall not constitute a waiver or cure of a default. Beneficiary's failure to enforce any default shall not constitute a waiver of the default or of any subsequent default. In the event the Loan Documents are referred to an attorney for enforcement of Beneficiary's rights or remedies, whether or not suit is filed or any proceedings are commenced, Trustor shall pay all Beneficiary's costs and expenses including Trustee's and attorneys' fees (including attorneys' fees for (i) any appeal, (ii) relief from stay motions, cash collateral disputes, assumption/rejection motions and disputes regarding proposed disclosure statements and plans in any bankruptcy proceeding or (iii) for any other judicial or nonjudicial proceeding or arbitration), appraisal and inspection fees and cost of a title report.

28. Cumulative Remedies. All of Beneficiary's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law, in equity or provided by statute. In order to obtain performance of Trustor's obligations under the Loan Documents, without waiving its rights in the Property, Beneficiary may proceed against Trustor or may proceed against any other security for or guaranty of the Note, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and/or the commencement of proceedings to enforce a different remedy. Notwithstanding any other provision set forth herein, Beneficiary's rights and remedies upon the occurrence of an Event of Default shall be governed by Utah Code Annotated Sections 57-1-101 et seq. and Section 78B-6-901, as the same may be amended from time to time, and the related interpretive case law.

29. Sale of Property after Default. Following an Event of Default, the Property may be sold separately or as a whole, at the option of Beneficiary. In the event of a Trustee's sale of all the Property, Beneficiary hereby assigns its security interest in any

personal property to the Trustee. Beneficiary may also realize on the personal property security in accordance with the remedies available under the UCC or at law. In the event of a foreclosure sale or the enforcement by Beneficiary of any other rights and remedies hereunder, Trustor and the holders of any subordinate liens or security interest waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation or to require Beneficiary to pursue its remedies against any other assets.

30. Appointment of Receiver. Following an Event of Default, Beneficiary shall be entitled, without notice, without bond, and without regard to the adequacy of the security, to the appointment of a receiver for the Property to take possession of and operate the Property and collect the rents, profits, issues and revenues thereof. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Beneficiary by the Loan Documents.

31. Foreclosure of Tenant's Rights; Subordination. Beneficiary shall have the right, at its option, to foreclose this Security Instrument, subject to the rights of any tenants on the Property. Beneficiary's failure to foreclose against any tenant shall not be asserted as a claim against Beneficiary or as a defense against any claim by Beneficiary in any action or proceeding. Beneficiary at any time may subordinate this Security Instrument to any or all of the Leases except that Beneficiary may retain its priority claim to any condemnation or insurance proceeds.

32. Reconveyance After Payment. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid, Trustee shall reconvey, without warranty, the Property then subject to the lien of this Security Instrument. The recitals in any reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in the reconveyance may be described as "the person or person legally entitled thereto." Trustor shall pay any Trustee's fees and charges for preparation and recording of the reconveyance.

33. Release of Parties or Collateral. Without affecting the obligations of any party under the Loan Documents (including any guarantor, surety or endorser of Trustor's obligations) or any subsequent purchaser of the Property, and without affecting the lien of this Security Instrument and Beneficiary's security interest in the Property, Beneficiary may, without notice (a) release Trustor and any other party now or hereafter liable for the payment or performance of any obligations under the Loan Documents, including guarantors of the Loan, (b) release all or any part of the Property, (c) subordinate the lien of this Security Instrument or Beneficiary's security interest in the Property, (d) take or release any other security or guaranty, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of any easement on the Property. Any subordinate lienholder shall be subject to all such releases, extensions, advances or modifications without notice to or consent from the subordinate lienholder. Trustor shall pay any reasonable Trustee's or attorneys' fees, title insurance premiums or recording fees in connection with any of the foregoing.

34. Nonwaiver of Terms and Conditions. TIME IS OF THE ESSENCE with respect to Trustor's performance of its obligations due under the Loan Documents. Beneficiary's failure to require prompt enforcement of any required obligations shall not constitute a waiver of the obligations due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Trustor and Beneficiary. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

35. Business Use. Trustor represents and warrants to Beneficiary that the Property is used solely for business or commercial purposes and that the Property is not used for Trustor's residence or for agricultural purposes.

36. Joint and Several Liability. If there is more than one Trustor of this Security Instrument, their obligations shall be joint and several.

37. Operating and Financial Statements. Trustor will deliver to Beneficiary upon Beneficiary's request, operating statements and occupancy reports (including a rent roll) for the Property in a form and for periods satisfactory to Beneficiary certified as correct by Trustor. Trustor shall permit Beneficiary to examine all books and records in the possession, custody or control of Trustor pertaining to the Property and deliver to Beneficiary upon request all financial statements, credit reports and other documents in the possession, custody or control of Trustor relating to the financial condition of any tenant of the Property, Trustor, any general

partner of Trustor, and any guarantor of the Loan, including rental, income and expense statements pertaining to the Property and tax returns. Notwithstanding the foregoing, as long as no Event of Default has occurred, Beneficiary shall not request copies of or access to such statements, books and records more often than once for each of Trustor's fiscal years.

38. Maximum Interest Rate. No person shall be obligated to pay the amount of any interest to the extent it is in excess of the maximum amount of interest permitted by applicable law. The Loan Documents are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance or detention of the money loaned under the Note or otherwise, or for the performance or payment of any of the Secured Obligations, exceed the maximum amount permitted under applicable law. Trustor and Beneficiary intend to comply strictly with the applicable usury laws of the State of Utah. If Beneficiary or any other holder of this Security Instrument shall ever receive as interest on the Loan an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the Loan so as to fully and strictly comply with such law. Without limiting the foregoing, all calculations of interest shall be made, to the extent permitted by law, by amortizing, prorating, allocating and spreading all interest in equal parts over the full stated term of the Note.

39. Evasion of the Prepayment Fee or Premium. If an Event of Default occurs, any tender of payment sufficient to satisfy the Secured Obligations made at any time after acceleration of the indebtedness hereby secured and prior to foreclosure sale shall constitute an evasion of the prepayment terms contained in the Note, if any, and shall be deemed a voluntary prepayment and subject to payment of any applicable prepayment fee. Accordingly, to the extent permitted by law, such payment shall include any additional fee or premium required by the prepayment privilege in the Note.

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

41. Substitution of Trustee. Beneficiary may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers, duties, authority and title of the original Trustee. Appointment of a successor Trustee shall become effective upon filing for record in the office of the County Recorder of each county in which said Property is situated a Substitution of 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.

42. Reserves. Upon (i) occurrence of an Event of Default, and (ii) written notice to Trustor from Beneficiary, Trustor shall thereafter pay to Beneficiary, together with and in addition to the monthly payments of principal and interest payable on the Note, on the date set forth in the Note for the making of monthly payments, until the Note is fully paid, a sum, as estimated by Beneficiary, equal to the taxes and special assessments next due on the Property, plus the premiums that will next become due and payable on insurance policies required by this Security Instrument, divided by the number of months to elapse before the premiums, taxes and special assessments are due, such sums to be held by Beneficiary to pay said premiums, taxes and special assessments. Such payments ("**Reserves**") are to be held without allowance of interest to Trustor (except as required by applicable law) and need not be kept separate and apart from other funds of Beneficiary. Such Reserves shall be applied by Beneficiary to real estate taxes, special assessments and insurance premiums on the Property as the same become due and payable. Collection of the reserves are solely for the added protection of Beneficiary and entails no responsibility on the part of Beneficiary beyond allowance of due credit for sums actually received by Beneficiary and the payment by Beneficiary of such taxes, special assessments and insurance premiums to the extent of the Reserves when statements therefor are actually presented to Beneficiary by Trustor. If the total of the Reserves shall exceed the amount of payments actually applied by Beneficiary, such excess may be credited by Beneficiary on subsequent payments to be made by Trustor, or at the option of Beneficiary, refunded to Trustor.

43. Property Management. Trustor agrees that Beneficiary shall have, and reserves the right to install, professional management of the Property at any time following the occurrence of an Event of Default. Such professional management shall be at the sole discretion of Beneficiary and nothing herein shall obligate Beneficiary to exercise its right to install professional management. The cost of such management shall be borne by Trustor, shall be secured by this Security Instrument and shall be treated as an additional advance under the Loan Documents.

44. USA Patriot Act Notification and Covenant: Beneficiary hereby notifies Trustor that, pursuant to the requirements of Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 (the "Act"), Beneficiary is required to obtain, verify and record information that identifies Trustor, which information includes the name and address of Trustor and other

information that will allow Beneficiary to identify Trustor in accordance with the Act. Neither Trustor nor any other party liable for the obligations under the Loan as a guarantor or general partner will, directly or indirectly, use the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to fund any activities or business of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or in any other manner that would result in a violation of OFAC sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.

45. Trustor Not a Foreign Person. Trustor is not a "foreign person" as that term is defined by Section 1445(f) (3) of the U.S. Internal Revenue Code of 1986, as amended.

46. Representations of Trustor. Trustor represents and warrants to Beneficiary that Trustor (a) is (1) an individual of legal age and capacity, or (2) a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, duly organized, validly existing and in good standing under the laws of its creation, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Security Instrument and the other Loan Documents.

47. Waiver of Right of Offset. No portion of the Secured Obligations shall be offset or compensated by any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Trustor may have against Beneficiary.

48. Notices. Except for any notice required by law to be given in another manner, any notice to Trustor or Beneficiary hereunder shall be in writing and shall be given (1) by a nationally-recognized overnight courier service (such as FedEx) or (2) by certified mail, return receipt requested, addressed to Trustor or Beneficiary at such addressee's stated herein or at such other address as such party may designate in writing by notice to the other as provided herein. Any such notice shall be effective (1) on receipt, when delivered by courier service, or (2) on the third business day after deposit in the United States mail, postage prepaid with return receipt requested, when delivered by United States mail as provided herein. Any party may change its address for notice purposes by giving a notice as provided herein. Rejection or other refusal to accept, or inability to deliver because of changed address of which no notice has been given will constitute receipt of the notice for purposes hereof.

49. Reasonableness of Fees and Costs. Wherever reference is made in this instrument to the payment or reimbursement by Trustor of any fees or costs incurred by Beneficiary in the administration of the Loan or the enforcement of the obligations of Trustor hereunder or under the other Loan Documents, such reference shall be deemed to refer to actual and reasonable out of pocket fees or costs

50. Successors and Assigns. This Security Instrument applies to, inures to the benefit of, and binds the parties and their respective heirs, representatives, successors and assigns.

51. Controlling Document. In the event of a conflict or inconsistency between the terms and conditions of this Security Instrument and the terms and conditions of any other of the Loan Documents, the terms and conditions of this Security Instrument shall prevail.

52. Invalidity of Terms and Conditions. If any term or condition of this Security Instrument is found to be invalid, the invalidity shall not affect any other term or condition of this Security Instrument and this Security Instrument shall be construed as if not containing the invalid term or condition.

53. Rules of Construction. This Security Instrument shall be construed so that whenever applicable, the use of the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited liability companies, trusts, limited partnerships and other entities.

54. Section Headings. The heading to the various sections have been inserted for convenience of reference only and shall not be used to construe this Security Instrument.

55. Applicable Law. This Security Instrument shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Utah without giving effect to the conflict of laws principles thereof, including the laws

governing the creation, perfection, enforceability and priority of the liens and security interests created by this Security Instrument and the procedures for foreclosure and for enforcement of the rights and remedies of Beneficiary under this Security Instrument. In the event that any provision of this Security Instrument shall be inconsistent with any provision of the laws of Utah, the laws of Utah shall govern over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with Utah law.

56. **Indemnification.** Trustor shall indemnify, defend and hold harmless Mortgagee from all losses, damages and expenses, including reasonable attorney's fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage.

57. **Request For Notice.** Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinabove set forth, unless and until Trustor provides a different address in writing to Beneficiary.

58. **WAIVER OF JURY TRIAL.** EACH OF TRUSTOR AND BENEFICIARY (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

TRUSTOR:

BROADWAY APARTMENTS, L.L.C., a Utah limited liability company

By Nathan Fredrick
NATHAN FREDRICK, Managing Member

(signatures must be acknowledged)

STATE OF UTAH)
)
COUNTY OF SALT LAKE) ss.

The foregoing Security Instrument was acknowledged before me this 18th day of March, 2016, by NATHAN FREDRICK, as Managing Member of BROADWAY APARTMENTS, L.L.C., a Utah limited liability company.

Brenda S. Holliday
NOTARY PUBLIC
residing at 516 HT
My commission expires: 11-18-19

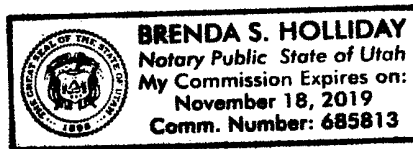


EXHIBIT A

(Legal Description of Real Property)

Land and Improvements situated in the County of Salt Lake, State of Utah, legally described as follows:

Parcel 1:

All of Lot 6, Block 37, Plat "B", Salt Lake City Survey.

Parcel 2:

Commencing at the Northwest corner of Lot 3, Block 37, Plat "B", Salt Lake City Survey, and running thence South 39 feet; thence East 140 feet; thence North 39 feet; thence West 140 feet to the place of beginning.

Property Address: 440 East Broadway, Salt Lake City, Utah 84111

Parcel No.: 16-06-402-010, 16-06-402-011