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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 16 P.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

COWBOY THEATRE HOUSING PARTNERS, LLC  
6440 South Wasatch Blvd., Suite 100  
Salt Lake City, Utah 84121  
Attn: Mark Cornelius.

TIN 14-05-283-001 & 14-05-283-002  
120240 - CAU (Space Above for Recorder's Use Only)

### TENANT IN COMMON AGREEMENT

THIS TENANT IN COMMON AGREEMENT (the "Agreement") is made as of the 6<sup>th</sup> day of December, 2019, by and among **COWBOY THEATRE HOUSING PARTNERS, LLC**, a Utah limited liability company (hereinafter referred to as the "CTHP") as to an undivided Interest as identified in this Agreement, and **EZEKIEL DUMKE, III, AS TRUSTEE OF THE EZEKIEL R. DUMKE FAMILY TRUST U/D/T DATED 10/30/1985**, a Utah limited liability company ("ERDFT") as to an undivided Interest identified in this Agreement (the CTHP and ERDFT, each referred to as an "Owner", and collectively the "Owners").

### RECITALS

WHEREAS, CTHP, as Seller, and ERDFT, as Buyer, entered into that Real Estate Purchase Agreement dated November   , 2019 (the "Purchase Agreement"), whereby CTHP agreed to sell an undivided Ninety-Three and Six Tents Percent (93.6%) interest in certain real property known as Commercial Units 101 and 102, of the Meldrum Housing Condominiums, located in Salt Lake City, Salt Lake County, State of Utah, more particularly described on Exhibit "A" attached hereto (hereinafter, the "Property"); and

WHEREAS, ERDFT acquired an undivided interest in the Property pursuant to the Purchase Agreement pursuant to Section 1031 of the Internal Revenue Code (a "1031 Exchange"); and

WHEREAS, the Owners are the owners, holding tenant-in-common interests ("Interests") in the Property, holding their respective Interests as more particularly set forth in this Agreement; and

**WHEREAS**, the Owners desire to enter into this Agreement to provide for the orderly administration of the Property, and to delegate authority and responsibility for the operation and management of the Property; and

**NOW, THEREFORE**, the parties hereto act and agree as follows:

1. **Management.**

1.1 For all matters related to leasing of units comprising the Property, the Property shall be managed by a professional property manager (the “**Manager**”) as from time to time is recommended by Owners’ Representative and is approved by the Owners in accordance with this Agreement. The Manager shall be responsible for the day-to-day administration of the Property. In accordance with the recommendation of Owners’ Representative, the Owners have appointed Cowboy Properties, L.C., a Utah limited liability company, as the initial Manager of the Property pursuant to the terms of that certain Management Agreement dated of even date herewith, by and between Cowboy Properties, L.C., and the Owners (the “**Management Agreement**”). The Owners by their execution of this Agreement, hereby confirm and ratify such appointment and Management Agreement. The Management Agreement is incorporated herein by this reference. Except as expressly provided otherwise in this Agreement, the Manager’s powers shall include all those necessary to preserve, protect, and maintain the Property. Without limiting the generality of the foregoing, the Manager shall have the right to:

(a) at such time as units are available for rental, collect each Owner’s share of income from the Property, hold the same in a common bank account pending payment of such Owner’s share of Property Expenses and disburse the remainder thereof to the Owners not less than semi-annually subject to any limitations imposed by Lender;

(b) pay each Owner’s share of Property Expenses with such Owner’s share of income from the Property and, if necessary, Additional Cash collected from the Owners in accordance with Section 5 hereof;

(c) service each Owner’s share of the liens, mortgages, trust deeds, and other obligations against the Property with such Owner’s share of income from the Property and, if necessary, Additional Cash collected from the Owners in accordance with Section 5 hereof, and negotiate modifications of any such indebtedness, subject to the approval of the Owners as provided in Section 5.1 hereof;

(d) employ or discharge such agents, employees, independent contractors, attorneys, and/or accountants as the Manager deems reasonably necessary for the preservation and maintenance of the Property upon such terms and for such compensation as the Manager shall determine;

(e) maintain full and complete books and records relating to the Property, which books and records shall be made available to each of the Owners or their authorized representatives upon request at all reasonable times, and which books and records shall be in form and substance sufficient to allow each Owner to calculate separately its net income or loss from the Property; provided, however, the Manager shall not maintain or provide either an Owner capital account or a Property balance sheet as part of the books and records, and entity-level accounting shall not be maintained;

(f) make emergency expenditures reasonably necessary to prevent imminent injury, harm or damage to persons or property, with funds collected in accordance with subparagraph (a) above, or at the Manager's election, the Manager may make such expenditures with other funds, and the amount of any such expenditures shall be prorated and reimbursed to the Manager by all of the Owners in accordance with Section 6 hereof;

(g) take all actions reasonably necessary to comply with any and all orders or requirements affecting the Property by any federal, state, county or municipal authority having jurisdiction over the Property; and

(h) negotiate modifications of any leases, subject to Section 4 hereof.

1.2 The Management Agreement shall (i) have an initial term of five (5) years, (ii) be renewable for successive one (1) year periods in the absence of an election by Owners holding not less than less than seventy five percent (75%) of the Interests to terminate, and (iii) be modified or renegotiated prior to renewal upon the approval of holders of not less than seventy-five percent (75%) of the Interests; provided, however, that the Management Agreement may not be amended or modified, and the Manager may not be removed by the Owners, without the prior written consent of a first mortgage secured Lender (herein a "Lender") as long as a mortgage loan secured by the Property (herein a "Mortgage Loan") is outstanding. The Management Agreement shall be subordinate to the rights of a Lender under the documents evidencing any such Mortgage Loan (herein the "Loan Documents") so long as the Mortgage Loan is outstanding. If the appointed Manager is unable or unwilling to serve as such, its replacement shall be appointed with the consent of holders of not less than seventy-five percent (75%) of the Interests. The Owners shall pay a management fee to the Manager pursuant to the terms of the Management Agreement.

1.3 The Owners hereby designate the Owners' Representative as specified in Section 2 as the contact for and on behalf of the Owners with respect to communications with the Manager and such designation and powers reserved to the Owners pursuant to the Management Agreement shall continue with the Owners' Representative during the term of the Management Agreement unless the Owners specify otherwise by an amendment to this Agreement. The powers and obligations granted to the Manager shall be governed by the terms and conditions of the Management Agreement. In the event of a conflict between the provisions of this Agreement and the Management Agreement, the

provisions of the Management Agreement shall be controlling. The Management Agreement shall be subordinate to the rights of the Lender under the Loan Documents so long as the Mortgage Loan is outstanding.

2. **Owner Representative.**

For purposes of this Agreement, including communications with the Manager, a Lender, and any third party for which communication is necessary and such matter has not been delegated to the Manager, the Owners designate CTHP as the Owners' Representative. CTHP shall use reasonable commercial efforts to keep all Owners informed with respect to any such communications and correspondence between CTHP and the Manager, a Lender, or any applicable third party. The Owners also acknowledge that notwithstanding the designation of CTHP as the representative of the Owners, Cowboy Partners serves as the sole Manager of CTHP pursuant to the Operating Agreement of CTHP and will carry out the duties of CTHP as such Manager.

3. **Leases.**

Pursuant to the terms of the Management Agreement, the Manager may enter into leases of units or other facilities in the Property without the consent of the Owners provided that each such lease conforms with the leasing guidelines set forth in Exhibit "A" attached to the Management Agreement.

4. **Mortgage Loan Liability.**

As of the date of this Agreement, there is no Mortgage Loan secured by the Property. If the Property is hereafter encumbered with a Mortgage Loan as provided below in Section 6, and if, as a result of any action taken by a Lender or one or more Owners, one or more other Owners (collectively, "**Paying Owner**") without the application of this Section 4, would otherwise bear more than its pro rata share of liability ("**Excess Liability**") under any Mortgage Loan encumbering the Property (as compared to its respective Interest), whether due to a default under such Mortgage Loan or otherwise, each Owner (but not its member or members) that did not bear its pro rata share of the Excess Liability (as compared to its respective Interest) shall be liable, in proportion to its respective Interest, to the Paying Owner for the Excess Liability.

5. **Additional Funds.**

Except as provided herein, each Owner will be responsible for a pro rata share (based on each Owner's respective Interests) of any future cash ("**Additional Cash**") needed in connection with the rental, operation, management, maintenance or reconstruction of the Property. Each Owner agrees that in the event (a) the Manager determines that Additional Cash is needed to pay expenses for the ownership, rental, management, maintenance or reconstruction of the Property that are contemplated by the budget approved in accordance with the Management Agreement ("**Budget**"), or (b) the Manager or Owners who own more than 50% of the Property determine that Additional Cash is needed to pay expenses not contemplated by the Budget, each Owner will contribute a pro rata share (based on each Owner's respective Interests) of such

**Additional Cash.** In addition, if any Mortgage Loan secured by the Property provides for recourse liability to any of the Owners and if any Owner pays more than its pro rata share of the liability related to the Mortgage Loan (as compared to its ownership Interest except as provided below) as a result of such recourse liability (“**Excess Payment**”), each Owner, and each manager of such Owner if the Owner is a limited liability company and any guarantor of the non-recourse carve outs of such Owner under such Mortgage Loan agrees to reimburse the other Owners on a fully recourse basis for such Owner’s pro rata share of such Excess Payment within thirty-one (31) days of such Excess Payment; provided that no Owner shall be entitled to reimbursement for an Excess Payment if such Owner caused such recourse liability to be incurred and such Owner’s pro rata share of such recourse liability shall be 100% and all other Owner’s pro rata share of such recourse liability shall be zero.

To the extent any Owner fails to pay its share of Additional Cash within thirty-one (31) days after the Manager or Owners who own more than 50% of the Property deliver notice that Additional Cash is required, (i) the Manager or the Owner(s) may advance such funds to the nonpaying Owner(s), who shall be liable on a limited basis as provided herein to repay the paying Manager or Owner(s) the amount of any such advance, or (ii) in the alternative, the Owner(s) may advance, in such proportions as they may agree, such funds as additional equity funds from such paying Owner(s) and the Interests of the Owners shall be adjusted as specified in Section 19 of this Agreement. If alternative (i) above is elected, the Manager is hereby authorized and directed to pay itself or the Owner(s) entitled to be repaid the sum advanced (with interest thereon at the interest rate specified in the Mortgage Loan) out of future cash from operations or from sale or refinancing of the Property or other distributions due the nonpaying Owner(s). If, however, payment is not made within sixty (60) days of completion of the Property, the contributing Owners may treat their loan as a contribution and the undivided Interest of the Owners shall be adjusted to take into account their respective equity contributions as specified in Section 19 below. The remedies against a nonpaying Owner provided for herein are the exclusive remedies available to the Owner arising out of the non-paying Owner’s failure to make the payments required herein. By executing this Agreement, each Owner agrees (i) that any such advance made by the Manager or the Owners will be made on a fully recourse basis subject to the remedies provided herein, and (ii) to repay such advance according to the provisions hereof, unless the remaining Owners elect to treat such advances as equity contributions as specified above.

## **6. Sale or Encumbrance of Property.**

**6.1 Sale and Financing.** Subject to the unanimous agreement of the Owners that a Mortgage Loan to be secured by the Property should be obtained, or that an existing Mortgage Loan should be refinanced, the Owners’ Representative shall be entitled to seek and negotiate the terms of any Mortgage Loan, or if applicable, the modification or extension of a Mortgage Loan, or any other Mortgage Loan to be secured by a lien against the Property, including any refinancing, and the sale of the Property (or portions thereof) to third-party purchasers. Any such new Mortgage Loan, loan modification, or any sale of the Property shall be subject to unanimous approval by the Owners, which approval shall be communicated to the Owners’ Representative by written

response to a written request by the Owners' Representative for approval. Any such written request for Mortgage Loan or sale approval shall be accompanied by a summary thereof setting forth the material terms of the proposed Mortgage Loan or sale.

**6.2 Distribution of Mortgage Loan or Sales Proceeds.** Notwithstanding any other provisions of this Agreement, proceeds of a Mortgage Loan or sale shall be distributed at the closing of the Mortgage Loan or the sale as follows:

- (a) To the extent necessary, the proceeds shall first be used to pay in full any Mortgage Loans encumbering title to the entire Property, including but not limited to a Mortgage Loan, if outstanding.
- (b) To the extent necessary, the proceeds shall next be used to pay in full any unsecured loans advanced for the benefit of the Property.
- (c) The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property.
- (d) Any proceeds remaining shall be paid to each Owner in accordance with their respective Interests.

**7. Transfer or Encumbrance.**

Subject to compliance with the specific terms of this Agreement, applicable securities laws and compliance with the terms of the Mortgage Loan, each Owner may sell, transfer, convey, pledge, encumber or hypothecate the Interests (or any part thereof). Any such transferee shall take such Interests subject to this Agreement and the transferor and transferee shall execute and cause to be recorded an assignment and assumption agreement whereby (i) transferor assigns to transferee all of his right, title and interest in and to this Agreement and the Management Agreement; and (ii) transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement and the Management Agreement with respect to the Interests to be transferred. Upon execution and recordation of such assumption agreement, the transferee shall become a party to this Agreement without further action by the other Owners. Notwithstanding the foregoing, (a) the total number of Owners owning the Property at any one time shall not exceed thirty-five (35), and any transfer that would result in there being more than thirty-five (35) Owners shall be null and void, and (b) except as otherwise provided in the Loan Documents, so long as a Mortgage Loan is outstanding, no Owner may transfer its Interest in the Property without the Lender's prior written consent.

**8. Right of Partition.**

The Owners agree that subject to the terms, conditions and restrictions contained herein, any Owner (and any of its successors-in-interest) shall have the right, while this Agreement remains in effect, to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with and to the extent provided by

applicable law. The Owners acknowledge and agree that partition of the Property may result in a forced sale by all of the Owners. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Owners, the Owners agree that, as a condition precedent to entering into this Agreement, each of the non-partitioning Owners shall have the right to buy all of the Interest owned by the partitioning Owner pursuant to the terms set forth in Section 10 below. Notwithstanding the foregoing provisions, except as otherwise provided in the Loan Documents, so long as a Mortgage Loan is outstanding, no Owner may seek to partition the Property without the Lender's prior written consent.

9. **Bankruptcy.**

The Owners agree that the following shall constitute an Event of Bankruptcy with respect to any Owner: (a) if a receiver, liquidator or trustee is appointed for any Owner; (b) if any Owner becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (c) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Owner; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Owner then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Owners, the Owners agree that, as a condition precedent to entering into this Agreement, each of the Owners not subject to an Event of Bankruptcy shall have the right to buy all of the Interest owned by the Owner subject to an Event of Bankruptcy pursuant to the terms set forth in Section 10 below.

10. **Purchase and Sale.**

**Purchase Option.** Upon an Owner (a) filing a complaint or instituting any proceeding at law or in equity to have the Property partitioned, (b) being subject to an Event of Bankruptcy, (c) having committed any act or omission resulting in a default under a Mortgage Loan or (d) failing to consent to any action which requires the unanimous approval of the Owners or approval of 75 % of the Interests, if Owners who own 50% or more of the Property approve such action (any Owner described in (a) through (d) being hereinafter referred to as a "**Defaulting Owner**"), the other Owners (the "**Nondefaulting Owners**") shall have the option to purchase the entire Interest owned by the Defaulting Owner by providing written notice ("**Default Call Notice**") to the Defaulting Owner and the other Nondefaulting Owners, if any. Upon receipt of the Default Call Notice, the Defaulting Owner shall be obligated to sell to the Nondefaulting Owners who have provided Default Call Notices the entire Interest in the Property owned by the Defaulting Owner for the Appraised Value of the Defaulting Owner's Interest as determined by Section 11 below. The purchasing Nondefaulting Owners shall be entitled to purchase a portion of the Defaulting Owner's Interest in proportion to their undivided Interest in the Property. If any Nondefaulting Owner elects not to purchase its share of the Defaulting Owner's Interest, the other Nondefaulting Owners shall be entitled to purchase additional Interests based on their undivided Interest in the Property.

11. **Appraised Value.**

The purchaser(s) of any Interest pursuant to Section 10 above (“Buyer”), in their sole discretion, will select an MAI certified appraiser (the “**Qualified Appraiser**”) with at least five (5) years of experience in the city or county where the Property is located to perform an MAI appraisal of the Property. The Qualified Appraiser shall not be an affiliate of the Buyer, the Manager, any affiliate of the Manager or any Owner, and will be paid by the Buyer. The Qualified Appraiser shall notify the Buyer of its determination of the fair market value of the entire Property without a discount for the tenant in common ownership arrangement (“**Appraised Value**”). The Appraised Value shall be reduced by the imputed costs of sale that ordinarily would be associated with the sale of the Property to a third party, including any broker’s commission.

The selling Owners by unanimous vote shall have the right to approve or reject the Appraised Value within ten (10) days of receiving the notification of Appraised Value. If they reject the Appraised Value within ten (10) days of receiving the notification, the selling Owners shall have the right to select their own Qualified Appraiser within ten (10) days of notifying the Buyer of their rejection of the Appraised Value. The Qualified Appraiser selected by the selling Owners shall be required to satisfy the same requirements as described above and shall render its determination of Appraised Value within twenty (20) days of appointment. The average of the two appraisals shall then be deemed the Appraised Value unless there is more than a twenty percent (20%) difference between the highest and lowest Appraised Value, in which case a third Qualified Appraiser (with the qualification described above) shall be selected within ten (10) days by mutual agreement of the first two appraisers. Such Qualified Appraiser shall render its determination of Appraised Value within twenty (20) days of appointment. The average of the three appraisals shall be deemed the Appraised Value.

If the selling Owners fail to select a Qualified Appraiser within such period, the Appraised Value determined by the Qualified Appraiser selected by Buyer shall be final and binding and shall be the Appraised Value for all purposes of this Section 11.

The Buyer and the selling Owners shall each pay for one-half of the first appraisal and, if applicable, half of the third appraisal. The selling Owners, on a pro rata basis in accordance with their ownership of the Property, shall pay, if applicable, for the second appraisal and half of the third appraisal.

If the Buyer is acquiring a portion of the Property, the purchase price shall be equal to ninety-five percent (95%) of the result obtained by determining the pro rata amount of the Appraised Value, less the reductions described above and a pro rata amount of the outstanding principal balance of one or more Mortgage Loans, for the portion of the Property being purchased. The Appraised Value as determined above shall be final and binding on the parties.

Once the Appraised Value has been determined, the Buyer shall have up to ninety (90) days in which to purchase the Property for all cash or such other terms as may be approved by the selling Owners as described above. The purchase price will first be

applied to satisfy any liens encumbering the Interest of the selling Owner (other than a Mortgage Loan), with the remainder paid to the selling Owner; provided that if such purchase price is not sufficient to extinguish all liens encumbering the Interest of the selling Owner (other than a Mortgage Loan); such selling Owner, and its owner if the selling Owner is a single member limited liability company, shall be responsible, on a recourse basis, for extinguishing such liens.

At the closing, each of the parties shall bear their share of all ordinary proratable items (including reserve accounts), closing costs and expenses in accordance with local real estate practice. If the Buyer does not complete the purchase of the Property for any reason other than the default of the selling Owners within the ninety (90) day period described above, that option shall lapse unless extended by mutual agreement of the parties. If the Buyer or an affiliate elects to exercise any option granted by Section 10 in the future, it shall be required to begin again the process of selecting the Qualified Appraiser to determine the Appraised Value.

**12. Proportionate Sharing of Profits and Losses.**

All Owners shall share in all revenues generated from the Property and all costs associated with the Property, including mortgage loan payments required by Loan Documents applicable to a Mortgage Loan, in proportion to their Interest in the Property, including in connection with any sale, transfer of the Property or refinancing of any indebtedness secured by the Property. No distribution of revenues from the Property shall be made to any Owner except out of excess cash flow after payment of all sums then due to the Lender under the Loan Documents.

**13. Proportionate Sharing of Debt/Compliance with Loan Documents.**

13.1 All Owners shall share in a Mortgage Loan(s) in proportion to their Interest in the Property, unless otherwise specified herein. Each Owner shall execute such instruments as are reasonably requested by the Owners' Representative in connection with a Mortgage Loan. All Owners shall comply with all of the terms and conditions of the Loan Documents, including but not limited to the execution of any document, consent or modification requested by a Lender which (i) does not change any substantive terms of a Mortgage Loan, or (ii) which is otherwise approved by holders of not less than fifty-one percent (51%) of the Interests.

13.2 Without limiting the generality of the foregoing, so long as a Mortgage Loan is outstanding, the Owners shall cause the Property to be maintained and otherwise conduct themselves in accordance with the Loan Documents. Without limitation of the foregoing, insofar as the Loan Documents require an Owner to be a so-called special purpose bankruptcy remote entity (an "SPE"), each Owner covenants and agrees at all times to maintain its status as such in accordance with the SPE requirements of the Loan Documents. In addition, the Interests of each Owner in the Property and the membership interests in any Owner may not be transferred or encumbered except in compliance with the Loan Documents. So long as a deed of trust or mortgage constitutes a lien against the Property, no Owner shall exercise against any other Owner or the Interest of any other

Owner any right, remedy, or indemnity such Owner may have pursuant to this Agreement, at law, equity, or otherwise. In addition, this Agreement and all rights, remedies, and indemnities of each Owner against any other Owner or in the Interests of any Owner pursuant to this Agreement, at law, in equity, or otherwise, are hereby made expressly subordinate and inferior to a Mortgage Loan and the lien of a deed of trust or mortgage.

**14. Other Decisions.**

All decisions affecting the Property, or its operation not specifically addressed in this Agreement shall be subject to the approval by holders of not less than fifty-one percent (51%) of the Interests.

**15. Term of Agreement.**

This Agreement shall continue for a period of twenty-five (25) years after the date hereof, or until such earlier times as the Owners shall sell their Interests in the Property.

**16. Absence of Partnership and Business Activities.**

This Agreement creates a contractual relationship between the Owners as tenants-in-common with respect to the Property. The Owners (other than any trade name associated with the operation of the Property) shall not conduct business in a common name, or otherwise hold themselves out as a partnership. This Agreement does not create, nor shall it be interpreted as creating a partnership, joint venture or similar relationship among the Owners. The Owners shall not file a partnership tax return with respect to their co-ownership of the Property.

**17. Covenants Run With Land.**

This Agreement and all of the covenants, provisions and requirements of this Agreement are intended to be and shall constitute covenants running with the land and shall be binding upon and shall inure to the benefit of each Owner, any other party who acquires or comes to have any Interest in the Property, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors and assigns. By acquiring, in any way coming to have an Interest in, or occupying an interest in the Property, the party so acquiring, coming to have such Interest or occupying, consents to, and agrees to be bound by, each and every provision of this Agreement. The provisions of this Section 17 shall not be deemed to modify any prohibitions against or limitations upon assignment or transfer set forth elsewhere in this Agreement.

**18. Loan Document Requirements.**

Each Owner acknowledges that the documents related to a Mortgage Loan may prohibit their rights to partition and certain other requirements. Accordingly, the following are additional covenants of each Owner hereunder, applicable during the term of a Mortgage Loan: (i) no partition actions shall be filed against the Property by any Owner during the term of a Mortgage Loan, (ii) each Owner irrevocably waives its right

of partition with respect to the Property during the term of a Mortgage Loan, (iii) each Owner irrevocably waives the ability to exercise any lien rights against the Property during the term of a Mortgage Loan, and (iv) the Lender, together with its successors and assigns, is an express third party beneficiary of this Agreement so long as a Mortgage Loan is outstanding.

**19. Adjustment of Interests.**

In the event that an Owner fails to make a contribution as specified in Section 5, which contributions are necessary for ownership and operation of the Property, and if the election is made as specified in Section 5, it may be necessary to adjust the respective Interests in the Property based upon the amount of contributions of equity contributed during ownership and operation of the Property. Consequently, and notwithstanding the allocation of Interests in any deed which initially or subsequently conveys Interests to the Owners, at the each of each annual period of ownership and operations of the Property during the term of this Agreement, the undivided Interest of each Owner, including CTHP and ERDFT, in and to the Property shall be adjusted as required and shall be equal to a fraction, expressed as a percentage, where the numerator is that portion of the equity contributed for the purchase of the Property, or in the case of CTHP the value of its undivided Interest based upon the purchase price paid by ERDFT for its Interest in the Property (without taking into account any portion of a Mortgage Loan which has been advanced or used for such purchase), and the denominator of which is the aggregate amount of all equity funds expended and/or held by all Owners (including CTHP and ERDFT) for acquisition and operation of the Property. For purposes of the foregoing computations, any portion of Mortgage Loan proceeds advanced for acquisition of the Property shall be disregarded when determining the respective Interests of the Owners. (As an example of the foregoing computation, in the event that Owner A purchased an Interest in the Property by paying \$1,000,000 for an undivided Interest in the Property, and as of the end of the fourth year, the total amount of equity funds (not including loan proceeds) expended by all Owners to purchase the Property (including the value attributable to CTHP) and to fund Additional Cash needed for operations as specified in Section 5 is equal to \$1,500,000.00, and further provided that Owner A failed to fund its share of the Additional Cash and the remaining Owners funded the amount that Owner A failed to pay, if the total equity contributions equal \$1,500,000, Owner A's Interest shall be equal to \$1,000,000 divided by \$1,500,000 or 66.667%.) In the event that the Interest of the Owners as determined herein above differs from the Interest shown on any deed or other instrument of record in the records of the Salt Lake County Recorder, each of the Owners consents and agrees to execute and deliver such deeds or other instruments in such form as shall correct the respective Interests as determined herein above.

**20. Miscellaneous.**

(a) This Agreement represents the entire agreement between the parties hereto concerning the Property, its development and operations, and supersedes all prior oral and written arrangements and agreements. This Agreement may not be modified or amended, except by further written instrument

or by an amendment to this Agreement signed by all of the parties hereto and, so long as the Mortgage Loan is outstanding, the written consent of the Lender.

(b) This Agreement shall be governed by and be construed in accordance with the laws of the State of Utah.

(c) This Agreement may be executed in two or more counterparts, which when taken together shall constitute one and the same instrument.

(d) If any legal action or arbitration or other proceedings are brought for the enforcement of this Agreement, or because of an alleged dispute or default in connection with any of the provisions of this Agreement, the successful and prevailing party or parties shall be entitled to recover reasonable attorneys' fees, expert witness fees, appraisal costs and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

(e) Each of the parties covenant and agree that it shall execute, acknowledge and deliver all further deeds, assignments, consents, transfers and other instruments which are reasonably required to protect and permit the enjoyment of the rights, benefits and interests pursuant to the terms of this Agreement and to appropriately carry out and perform the transactions contemplated thereby. Any Owner may cause to be recorded this Agreement or a notice of interest with the appropriate recorder's office so that notice of this Agreement is given.

(f) This Agreement shall be binding upon and inure to the benefit of the successors, assigns and heirs of the parties hereto.

(g) No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and (a) signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought and (b) if required, is consented to the Lender so long as the Mortgage Loan is outstanding.

(h) Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, or by facsimile transmission and addressed or sent to the Owner at the addresses or facsimile number set forth under its name on the signature page hereof. Any party hereto pay from time to time, by written notice to be others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery, (b) as of the date sent by facsimile (if sent prior to 5:00 p.m. eastern time and if receipt has been acknowledged by the receiving machine), or (c) as of the

third business day after mailing by United States registered or certified mail, return receipt requested, posted prepaid, addressed as set forth above, or (d) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

(i) No act of any Owner shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Owner affected. Any Owner hereto may specifically waive any breach of this Agreement or by any other Owner, but no such waiver shall constitute a continuing waiver of similar or other breaches.

(j) If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

(k) THE UNDIVIDED INTERESTS IN THE PROPERTY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE INTERESTS MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

(l) Time is of the essence of each and every provision of this Agreement.

(m) Each of the Owners hereby agree that all of the provisions of this Agreement shall be subject to, and subordinate to, the terms and conditions of the Mortgage Loan for so long as the Mortgage Loan is outstanding.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**CTHP:**

**COWBOY THEATRE HOUSING PARTNERS,  
LLC, a Utah limited liability company**

By its Manager, Cowboy Partners, L.C., a Utah limited liability company

By: 

Mark R. Cornelius  
Vice President

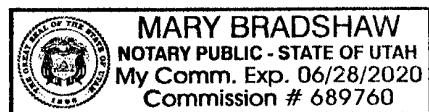
STATE OF UTAH )  
: ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me by Mark R. Cornelius, as the Vice President of Cowboy Partners, L.C., a Utah limited liability company, the Manager of COWBOY THEATRE HOUSING PARTNERS, LLC, a Utah limited liability company, this 6<sup>th</sup> day of December, 2019.

In witness whereof, I hereunto set my hand and official seal.

### My Commission Expires:

6/28/2020



**EZEKIEL R. DUMKE FAMILY TRUST U/D/T  
DATED 10/30/1985**

By:

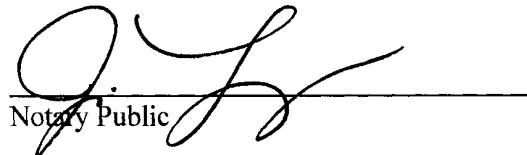


Ezekiel Dumke, III  
Trustee

STATE OF UTAH )  
: ss.  
County of Salt Lake )

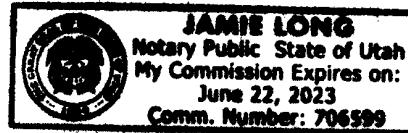
The foregoing instrument was acknowledged before me by Ezekiel Dumke, III, as Trustee of the Ezekiel R. Dumke Family Trust u/d/t dated 10/30/1985, this 5<sup>th</sup> day of December, 2019.

In witness whereof, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

04-22-2023



Comm.  
706599

**EXHIBIT A  
PROPERTY DESCRIPTION**

Commercial Unit 101 and Commercial Unit 102, contained within MELDRUM HOUSE CONDOMINIUMS, as the same is identified in the Plat filed in the office of the Salt Lake County Recorder, Utah, on September 19, 2011 as Entry No. 11245134 in Book 2011 of Plats at Page 120 and in the Declaration recorded September 19, 2011 as Entry No. 11245135 in Book 9950 at Page 8042 (as said Declaration may have been subsequently restated, amended and/or supplemented).

TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities defined under said Declaration.

Tax Id No.: 16-05-283-001 and 16-05-283-002