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

by

PALISADES APARTMENTS, LLC,  
a Delaware limited liability company

as Trustor and Grantor

to

COTTONWOOD TITLE INSURANCE AGENCY, INC.,  
as Trustee for the Benefit of

EAST WEST BANK,  
a California banking corporation

as Beneficiary

Dated as of January 27, 2022

APN: 16-06-481-008, 16-06-481-009

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## **DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS**

THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (as amended, restated, replaced or otherwise modified from time to time, this "**Deed of Trust**") is made as of January 27, 2022 by PALISADES APARTMENTS, LLC, a Delaware limited liability company, doing business in Utah as Palisades Apartments Utah, LLC ("**Grantor**"), to COTTONWOOD TITLE INSURANCE AGENCY, INC., whose address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121 ("**Trustee**"), for the benefit of EAST WEST BANK, a California banking corporation, whose address is 135 North Los Robles Avenue, Suite 600, Pasadena, California 91101 ("**Beneficiary**").

### **RECITALS**

A. Grantor owns the fee simple interest in that certain real property situated in the City of Salt Lake City, County of Salt Lake, State of Utah, described in Exhibit A attached hereto and made a part hereof (the "**Land**").

B. Beneficiary requires, as a condition making the Loan, the execution and delivery of this Deed of Trust by Grantor.

C. This Deed of Trust is given to Beneficiary pursuant to that certain Loan Agreement of even date herewith between Grantor and Beneficiary (as amended, restated, replaced or otherwise modified from time to time, the "**Loan Agreement**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Loan Agreement. Notwithstanding the foregoing, this Deed of Trust shall in no way secure any Guaranty or Environmental Indemnity.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor covenants for the benefit of Beneficiary as follows:

### **ARTICLE 1 - GRANTS AND OBLIGATIONS SECURED**

#### **A. Grants.**

1.1 Land. Grantor hereby irrevocably grants, transfers, conveys, and assigns to Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, for the benefit of Beneficiary, all estate, right, title and interest of Grantor, now owned or hereafter acquired, in, to and under the Land, together with all right, title and interest of Grantor therein and in and to:

(a) Improvements. All buildings and other improvements now or hereafter located on the Land, all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), pumps and pumping stations used in connection therewith and all shares of stock evidencing the same, all machinery, equipment, appliances, furnishings, inventory, fixtures and other property used or useable in connection with the Land and the improvements thereon, including, but not limited to, all storage tanks and pipelines, all gas, electric, heating, cooling, air conditioning, refrigeration and plumbing fixtures and equipment,

which have been or may hereafter be attached or affixed in any manner to any building now or hereafter on the Land (the “**Improvements**”) together with all interest and estate which Grantor may hereafter acquire in the Improvements;

(b) **Rights of Way.** All the rights, rights of way, easements, licenses, profits, privileges, tenements, hereditaments and appurtenances, now or hereafter in any way appertaining and belonging to or used in connection with the Land and/or the Improvements, and any part thereof or as a means of access thereto, including, but not limited to, any claim at law or in equity, and any after acquired title and reversion in or to each and every part of all streets, roads, highways and alleys adjacent to and adjoining the same;

(c) **Income.** All rentals, earnings, income, deposits, security deposits, receipts, royalties, revenues, issues and profits, and accounts receivable generated from the use and operation of all or any portion of the Land and/or the Improvements, which, after the date hereof, and while any portion of the indebtedness secured hereby remains unpaid, may accrue from the Land and/or the Improvements and any part thereof, subject, however, to the rights, powers and authority described in the last paragraph of Section 1.2 and in Article 3 below; and

(d) **FF&E.** All of Grantor’s interests under any furniture, fixtures and equipment (“**FF&E**”) owned by Grantor.

Any of the foregoing arising or acquired by Grantor after the date hereof, the Land, and the property described in subparagraphs (a), (b), (c), and (d) of this Section 1.1 and the rights described in Section 1.4 below are collectively defined hereinafter as the “**Property**.”

**1.2 Collateral.** Grantor hereby grants a security interest to Beneficiary in, and assigns to Beneficiary, all of Grantor’s right, title and interest in and to the following described property and any and all products and proceeds thereof, now owned or hereafter acquired by Grantor (sometimes all of such being collectively referred to herein as the “**Collateral**”):

(a) **Tangible Property.** All existing and future goods and tangible personal property owned by Grantor or in which Grantor has sufficient rights to grant a security interest, located on the Property or wherever located and used or useable in connection with the use, operation or occupancy of the Property or in construction of the Improvements, including, but not limited to, all appliances, furniture and furnishings, fittings, materials, supplies, equipment and fixtures, and all building material, supplies and equipment now or hereafter delivered to the Property and installed or used or intended to be installed or used therein whether stored on the Property or elsewhere; and all renewals or replacements thereof or articles in substitution thereof; provided, however, should the Land be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, such tangible personal property shall be limited to only those items specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended);

(b) **General Intangibles.** All general intangibles relating to design, development, operation, management and use of the Property and construction of the

Improvements, including, but not limited to: (i) all names under which or by which the Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names or any variants thereof, and all goodwill in any way relating to the Property; (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals and consents issued or obtained in connection with the construction of the Improvements; (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the use, occupancy or operation of the Property; (iv) all rights as a declarant (or its equivalent) under any covenants, conditions and restrictions or other matters now or hereafter of record affecting the Property; (v) all materials prepared for filing or filed with any governmental agency; (vi) all rights under any contract in connection with the development, design, use, operation, management and construction of the Property; and (vii) all books and records prepared and kept in connection with the acquisition, construction, operation and occupancy of the Property and the Improvements;

(c) Contracts. All construction, service, engineering, consulting, leasing, architectural, design, purchase and other similar contracts of any nature (including, without limitation, those of any general contractors, subcontractors and materialmen), as such may be modified, amended or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use, and/or disposition of any portion of or all of the Property;

(d) Plans and Reports. To the extent assignable or transferrable, all architectural, design and engineering drawings, plans, specifications, working drawings, shop drawings, general conditions, addenda, soil tests and reports, feasibility studies, appraisals, engineering reports, environmental reports and similar materials relating to any portion of or all of the Property and modifications, supplements and amendments thereto, including without limitation, those more specifically described in the Loan Agreement;

(e) Sureties. All payment and performance bonds or guarantees and any and all modifications and extensions thereof relating to the Property;

(f) Payments. All reserves, deferred payments, deposits, refunds, cost savings, letters of credit and payments of any kind relating to the construction, design, development, operation, occupancy, use and disposition of all or any portion of the Property, including, without limitation, any property tax rebates now owing or hereafter payable to Grantor, and any reimbursements and other payments now or hereafter payable to Grantor on account of prepayments or overpayments of fees or payment of costs of infrastructure improvements that benefit real property other than the Property;

(g) Financing Commitments. All proceeds of any financing commitments now or hereafter obtained by Grantor with respect to the Property;

(h) Claims. All proceeds and claims arising on account of any damage to or taking of the Property or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Property;

(i) Insurance. All policies of, and proceeds resulting from, insurance relating to the Property or any of the Collateral, and any and all riders, amendments, renewals,

supplements or extensions thereof, and all proceeds thereof, whether or not the proceeds are from policies of insurance required by Beneficiary;

(j) Deposits. All deposits made with or other security given to utility companies by Grantor with respect to the Land and/or the Improvements, and all advance payments of insurance premiums made by Grantor with respect thereto and claims or demands relating to insurance and all deposit accounts wherever located;

(k) Stock. All shares of stock or other evidence of ownership of any part of the Property that is owned by Grantor in common with others, including all water stock relating to the Property, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property;

(l) Proceeds. All proceeds, whether cash, promissory notes, contract rights or otherwise, of the sale or other disposition of all or any part of the estate of Grantor in the Property now or hereafter existing thereon;

(m) Funds Accounts. All deposit or other accounts opened or to be opened with one of Beneficiary's branches (including without limitation, the Borrower's Funds Account), and all amounts deposited therein from time to time, and all interest, if any, accrued thereon;

(n) Leases and Rents. All the Leases, income, rents, revenues, issues, deposits, receipts, profits and proceeds, and accounts receivable generated from the leasing, use and operation, of the Property and the Collateral to which Grantor may be entitled, whether now due, past due or to become due subject to the license granted in Article 3 below; and

(o) Other. Without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Financial Assets, Investment Properties, Chattel Paper and General Intangibles, as those terms are defined in the Uniform Commercial Code from time to time in effect in the State of California.

The security interest granted by subsection (n) above is intended by Grantor to be subordinate to the provisions of Article 3 hereof and shall not take priority unless and until the absolute assignment granted to Beneficiary by Grantor in Article 3 is for any reason deemed to be ineffective.

1.3 Fixture Filing. The personal property in which Beneficiary has a security interest includes goods which are or shall become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to Section 9a-502(3) of the Utah Uniform Commercial Code. This filing is to be recorded in the real estate records of the county in which the Property is located. This filing remains in effect as a fixture filing until this Deed of Trust is released or satisfied of record or its effectiveness otherwise terminates as to the Property. In that regard, the following information is provided:

Name of Debtor: Palisades Apartments, LLC

Address of Debtor: See Section 6.13 hereof.

Name of Secured Party: East West Bank.

Address of Secured Party: See Section 6.13 hereof.

Grantor warrants and agrees that, to Grantor's knowledge, as of the effective date of this Deed of Trust, there is no financing statement covering the foregoing Collateral, the Property, or any part thereof, on file in any public office.

1.4 Mineral Rights. Grantor hereby assigns and transfers to Beneficiary all damages, royalties and revenue of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property, with the right in Beneficiary to receive and receipt therefor, and apply the same to the indebtedness secured hereby after an Event of Default and during the continuance thereof, and Beneficiary may demand, sue for and recover any such payments but shall not be required to do so.

B. Obligations Secured.

1.5 Payment of Indebtedness. The grants, assignments and transfers made in Sections 1.1, 1.2, 1.3 and 1.4 are given for the purpose of securing, in such order of priority as Beneficiary may determine:

(a) Payment of the Indebtedness evidenced by a promissory note of even date herewith and any renewals, extensions, modifications, changes or amendments thereof, in the original principal amount of up to THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00) executed by Grantor and payable to Beneficiary (the "Note"), together with interest thereon and late charges as provided by the Note, which is made a part hereof by this reference. The Note provides for a variable rate of interest. The maturity date of the Note and other Obligations secured by this Deed of Trust is January 27, 2032.

(b) Payment of such further sums as Grantor, may borrow from Beneficiary when evidenced by another note or notes, reciting it is so secured, payable to Beneficiary or order and made by Grantor, and all renewals, extensions, modifications, changes or amendments of such note or notes.

(c) Payment of all other moneys agreed or provided to be paid by Grantor in the Loan Agreement and performance of all other obligations of Grantor contained in the Loan Agreement (including any amendments, modifications or changes thereto), which is made a part hereof by this reference.

(d) Payment of all other moneys agreed or provided to be paid by Grantor in this Deed of Trust and performance of all other obligations of Grantor contained in this Deed of Trust (including any amendments, modifications or changes hereto).

(e) Performance of each agreement of Grantor contained in any other agreement given by Grantor to Beneficiary which is for the purpose of further securing any

indebtedness or obligation secured hereby (other than any Guaranty and Environmental Indemnity) and any amendments, modifications or changes thereto.

1.6 Defined Terms. Capitalized terms used but not defined in this Deed of Trust will have the meanings given in the Loan Agreement.

## ARTICLE 2 - COVENANTS OF GRANTOR

### A. Condition and Operation of Property.

2.1 Maintenance and Preservation. Grantor agrees (a) to keep or cause to be kept, the Property in good condition and repair; (b) not to commit or permit any physical waste, provided, however, such physical waste shall exclude wear and tear to the Property that occurs in the ordinary course of business of the Property by Grantor or any affiliate thereof; (c) not to commit or permit any removal or demolition or substantial alteration of the Property except for (i) such alterations as may be required by any law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Property, and (ii) construction or alterations contemplated under the Loan Agreement, if any; (d) to complete in good and workmanlike manner any construction or restoration which may be performed on the Property and those improvements and alterations contemplated in the Loan Agreement, if any, as and when permitted pursuant to the Loan Agreement; (e) to promptly restore any portion of the Property which may be damaged or destroyed, subject to the conditions of Section 2.6; (f) not to permit any mechanics' or materialmen's liens against the Property, except as may be contested, bonded or insured over as provided in the Loan Agreement; (g) except as otherwise provided in the Loan Agreement, not to initiate or acquiesce in any change of zoning or other land classification which affects the Property without Beneficiary's prior written consent; and (h) to perform each of Grantor's obligations set forth in the Loan Agreement.

2.2 No Violation. Grantor shall not commit, permit or allow to exist any violation of any law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Property or the Collateral or of any matter of record affecting the Property or the Collateral; provided, however, Grantor shall be permitted to challenge or contest any of the foregoing when and as permitted in Section 2.9 (below).

2.3 Books and Records. Grantor shall maintain, or cause to be maintained, in the county in which the Property is located, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by Grantor or by any other person or entity whatsoever excepting persons unrelated to and unaffiliated with Grantor and who leased from Grantor portions of the Property for the purposes of occupying the same. Grantor shall prepare and deliver to Beneficiary such financial statements regarding operation of the Property as are required by the Loan Agreement. Beneficiary, or its designee, shall have the right from time to time during normal business hours to examine such books, records and accounts, and the equipment containing said books, records and accounts (including all computers, computer tapes, disks, drives or other storage devices) and to make copies or extracts therefrom; provided that, so

long as no Event of Default is then continuing, Beneficiary shall give Grantor reasonable advance notice of such inspection, which notice may be telephonic.

## B. Insurance.

2.4 Insurance Policies. Grantor shall, at all times, keep the Improvements insured against loss or damage by fire with extended coverage and against any other risks or hazards which, in the opinion of Beneficiary, should be insured against to the amount of the full insurable value thereof on a replacement cost basis with a company or companies and in such form and with such endorsements as may be approved or reasonably required by Beneficiary. Said insurance policies shall be endorsed with a standard non-contributory mortgagee clause, and may only be cancelled or modified upon not less than the thirty (30) days' prior written notice to Beneficiary. Grantor will also carry public liability insurance, in such form, amounts and with such companies as Beneficiary may from time to time reasonably require, with Beneficiary included thereon as a named insured under a standard mortgagee endorsement of the character above-described. Beneficiary shall not by the fact of approving, disapproving, accepting, obtaining or failing to obtain any insurance, incur any liability for the form or legal sufficiency of insurance contracts, insolvency of insurance companies or payment of judgments or expenses of litigation, and Grantor hereby expressly assumes full responsibility therefore and liability, if any, thereunder.

2.5 Casualty Notice. After the happening of any casualty or event causing damage to the Property and which is reasonably estimated to cost more than One Hundred Fifty Thousand Dollars (\$150,000) (the "Casualty Threshold") to repair, replace or restore, Grantor shall give prompt written notice thereof to Beneficiary.

2.6 Assignment of Proceeds. Grantor hereby absolutely and unconditionally assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive. All such proceeds in excess of the Casualty Threshold shall be delivered to and held by Beneficiary to be applied to Beneficiary's expenses in settling, prosecuting or defending any insurance claim, and then, subject to the satisfaction of all of the conditions set forth below, to the restoration of any portion of the Property and/or the Collateral that has been damaged or destroyed to the same condition and value as existed prior to such damage or destruction. The conditions to such use are: (a) no Event of Default shall have occurred and be continuing; (b) the restoration is permissible under applicable law and Beneficiary's security is not materially impaired, as reasonably determined by Beneficiary; (c) all income from the Property (from insurance or otherwise) during such restoration and thereafter will be sufficient to pay all debt service and operating expenses then due and payable during such restoration period; (d) Grantor provides evidence satisfactory to Beneficiary that the insurance that Beneficiary requires Grantor to maintain will be available to Grantor during restoration and thereafter; (e) Beneficiary shall have reasonably approved the plans and specifications for such restoration; and (f) in the event that in Beneficiary's reasonable judgment the insurance proceeds are not sufficient to accomplish restoration, Grantor deposits with Beneficiary, the additional amounts necessary to accomplish restoration. Proceeds disbursed for restoration will be released to Grantor as follows: (i) Grantor shall have delivered to Beneficiary evidence reasonably satisfactory to Beneficiary of the estimated cost of the restoration; (ii) Beneficiary shall have reasonably approved the plans, specifications and contracts for the restoration; (iii) Grantor shall have delivered to Beneficiary such applicable building permits, other permits, architect's certificates, waivers of lien, and evidence of cost, payment and performance

as Beneficiary may reasonably require and approve and (iv) Grantor shall provide such other things as Beneficiary shall reasonably require in connection with the restoration. If any of the conditions set forth above are not satisfied or if Grantor fails to commence restoration of the Property (which, for the purposes hereof, includes the pursuit of entitlements and/or starting the design or architectural phase and/or commencing construction) within sixty (60) days after the insurance proceeds have been paid, or if Grantor fails to diligently pursue such restoration to completion (subject to force majeure), then Beneficiary shall have the option to either apply the insurance proceeds to any indebtedness secured hereby in such order as Beneficiary may reasonably determine or release such proceeds to Grantor, without such release being deemed a payment of any indebtedness secured hereby, rather than to apply such proceeds to the restoration of the Property and/or the Collateral. Such application or release shall not cure or waive any Default or Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. If the Property and/or the Collateral is completely restored at a cost less than the available insurance proceeds, and if there is not then a Default or Event of Default under the Loan Documents, then such excess proceeds shall be promptly paid over to Grantor. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims, proceeds and awards assigned to Beneficiary, but Beneficiary shall not be responsible for any failure to collect any claim, proceeds or award, regardless of the cause of the failure. As used in this Section, the term "Beneficiary" shall be deemed to include any parent company of Beneficiary and/or its affiliates or subsidiaries. Grantor shall have the right to participate with Beneficiary in negotiating any settlement, compromise, adjustment of any claim in connection with any casualty to the Improvements, or any condemnation of all or part of the Property.

2.7 Transfer of Policy. In the event of the foreclosure of this Deed of Trust or other transfer of the title to the Property in extinguishment, in whole or in part, of the indebtedness secured hereby, all right, title and interest of Grantor in and to any insurance policy then in force shall pass to the purchaser or grantee.

### C. Payments.

2.8 Loan Payments. Grantor shall pay the principal, interest and other charges due under the Note and the Loan Agreement according to their terms.

2.9 Liens. Grantor shall pay or cause to be paid:

(a) Prior to the assessment of any penalty or delinquency, all taxes, assessments and other governmental or public charges affecting the Property or the Collateral, including assessments on appurtenant water stock, and any accrued interest, cost and/or penalty thereon (individually, "Imposition" and collectively, "Impositions"). Upon written request of Beneficiary, Grantor shall submit paid receipts therefor. If permitted by law, Grantor may pay the Imposition in installments (together with any accrued interest). Grantor shall not be required to pay any Imposition and may contest any lien of record or purported violation of law so long as (i) its validity is being actively contested in good faith and by appropriate proceedings, (ii) Grantor has demonstrated to Beneficiary's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not reasonably be expected to result in conveyance of the Property in satisfaction of such Imposition or otherwise materially impair Beneficiary's

interest under this Deed of Trust, and (iii) Grantor has furnished Beneficiary with a bond or other security reasonably satisfactory to Beneficiary in an amount not less than one hundred twenty five percent (125%) of the applicable claim. Upon written demand by Beneficiary from time to time, Grantor shall deliver to Beneficiary, within thirty (30) days following the due date of any Imposition, evidence of payment reasonably satisfactory to Beneficiary. In addition, upon demand by Beneficiary from time to time, Grantor shall furnish to Beneficiary a tax reporting service for the Property of a type and duration, and with a company, reasonably satisfactory to Beneficiary.

(b) When due, all encumbrances (including any debt secured by deed of trust), ground rents, liens and/or charges, with interest, on the Property or the Collateral, or any part thereof, and all costs, fees and expenses related thereto.

(c) When due, all charges for utilities or services servicing any portion of or all of the Property, including, but not limited to, electricity, gas, water and sewer.

2.10 Impound. Upon demand by Beneficiary, which shall not be made prior to the occurrence of an Event of Default and only during the continuance thereof, Grantor shall pay to Beneficiary on the first day of each month, together with and in addition to the regular installments of principal and interest due under the Note, until the indebtedness secured hereby is paid in full, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments, insurance premiums, and other similar charges as estimated by Beneficiary to be sufficient to enable Beneficiary to pay at least thirty (30) days before they become due, all taxes, assessments, insurance premiums, and other similar charges against the Property. Beneficiary shall not be obligated to pay interest on any such sums. Upon demand of Beneficiary, Grantor shall deliver to Beneficiary such additional sums as are necessary to enable Beneficiary to pay such taxes, assessments, insurance premiums and similar charges. Upon repayment of the indebtedness secured hereby in full, Beneficiary shall promptly disburse to Grantor all escrows or other amounts then being held by Beneficiary under the terms of this Section 2.10. Beneficiary's obligations under this Section 2.10 shall survive any termination of this Deed of Trust or reconveyance of the Property.

2.11 Reimbursement. Grantor shall within fifteen (15) days of written demand, after expenditure, all sums expended or expenses incurred by Trustee and/or Beneficiary in acting under any of the terms of this Deed of Trust, including, without limitation, any fees and expenses (including reasonable attorneys' fees), incurred in connection with any reconveyance of the Property or any portion thereof, or to compel payment of the Note or any portion of the indebtedness evidenced thereby or in connection with any default thereunder, including without limitation attorneys' fees incurred in any bankruptcy or judicial or nonjudicial foreclosure proceeding, with interest from date of expenditure until paid at the Default Rate provided for in the Note and said sums shall be secured hereby.

2.12 Beneficiary's Statement Fee. Grantor shall pay the reasonable amount demanded by Beneficiary or its authorized servicing agent for any statement regarding the obligations secured hereby; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

#### **D. Condemnation.**

2.14 Condemnation. If the Property, the Collateral or any part thereof, is taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor to which Grantor shall be entitled. Beneficiary shall be entitled at its option to join with Grantor to commence, appear in and prosecute in any action or proceeding or to make any compromise or settlement in connection with such taking or damage to the extent of the interests of Grantor therein, provided that if there exists an Event of Default that is continuing, Beneficiary shall have the right to take such action in its own name but Beneficiary shall not be responsible for any failure to collect any claim or award, regardless of the cause of the failure; Grantor hereby absolutely and unconditionally assigns to Beneficiary all such compensation, awards, damages, rights of action and proceeds to which Grantor shall be entitled (the "Proceeds"), and, after deducting therefrom all its reasonable expenses, including reasonable attorneys' fees, Beneficiary shall apply or release the Proceeds with the same effect and as provided in Section 2.6 above with respect to disposition of insurance proceeds; provided, however, that if there are any excess Proceeds after the full payment of the costs of the restoration of the Property or the Collateral, as applicable, Grantor shall have the right to cause Beneficiary to apply such excess to the reduction of the principal balance due under the Note. Grantor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may reasonably require. Nothing herein contained shall prevent the accrual of interest as provided in the Note on any portion of the Proceeds to be applied to the principal balance due under the Note until the Proceeds are received by Beneficiary.

#### E. Rents and Leases.

2.15 Lease Covenants. "Lease" means any lease, license or other use or rental agreement of all or any portion of the Property or Improvements, entered into at any time and includes any extensions or renewals thereof and any amendments thereto. Grantor shall submit to Beneficiary for its prior written approval any Lease of the Improvements or any portion thereof other than a residential lease. Grantor shall provide Beneficiary with true, correct and complete copies of all such Leases, together with such other information relating to the Leases and the tenants thereunder, as Beneficiary shall reasonably request. Grantor shall not accept prepayments of rent (excluding security deposits) under any Lease for any period in excess of one month and shall perform all covenants of the lessor under all Leases. Grantor shall not materially amend or terminate any Leases except in the ordinary course of business without Beneficiary's prior written consent other than residential leases, the amendment or termination of which shall not require Beneficiary's consent if done in the ordinary course of business. Grantor shall perform and carry out all of the provisions of the Leases to be performed by Grantor and shall appear in and defend any action in which the validity of any Lease is at issue and shall commence and maintain any action or proceeding necessary to establish or maintain the validity of any Lease and to enforce the provisions thereof.

2.16 Residential Leases. Grantor shall enter into residential leases of portions of the Improvements from time to time on market terms and conditions and using Grantor's standard lease form approved by Beneficiary.

2.17 Subordination of Leases and Attornment. To the extent not prohibited by applicable law, each Lease of any portion of the Property or Improvements shall be absolutely subordinate to the lien of this Deed of Trust. However, each Lease shall contain a provision

reasonably satisfactory to Beneficiary, and each tenant under a Lease, by virtue of executing a Lease covering the Property, the Improvements or any portion thereof, hereby agrees, that in the event of the exercise of the private power of sale or a judicial foreclosure hereunder, such Lease, at the option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new Lease for the balance of the term of such Lease then remaining upon the same terms and conditions.

#### **F. Other Rights and Obligations.**

**2.17 Assignment of Contracts.** In addition to any other grant, transfer or assignment effectuated hereby, without in any manner limiting the generality of the grants in Article 1 hereof, Grantor shall assign to Beneficiary, as security for the indebtedness secured hereby, Grantor's interest in all agreements, contracts, licenses and permits affecting the Property and/or the Collateral in any manner whatsoever, such assignments to be made, if so requested by Beneficiary, by instruments in form reasonably satisfactory to Beneficiary; but no such assignment shall be construed as a consent by Beneficiary to any agreement, contract, license or permit so assigned, or to impose upon Beneficiary any obligations with respect thereto.

**2.18 Mortgage Tax.** In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of the Property and/or the Collateral for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of deeds of trust or debts secured by deeds of trust, or the manner of the collection of any such taxes, in each case so as to adversely affect this Deed of Trust, or imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property and/or the Collateral upon Beneficiary, the indebtedness secured hereby shall immediately become due and payable at the option of Beneficiary. However, such election by Beneficiary shall be ineffective if such law either (a) shall not impose a tax upon Beneficiary nor increase any tax now payable by Beneficiary, or (b) shall impose a tax upon Beneficiary or increase any tax now payable by Beneficiary and prior to the due date: (i) Grantor is permitted by law and can become legally obligated to pay such tax or the increased portion thereof (in addition to all interest, additional interest and other charges payable hereunder, under the Loan Agreement and under the Note without exceeding the applicable limits imposed by the usury laws of the State of California); (ii) Grantor does pay such tax or increased portion; and (iii) Grantor agrees with Beneficiary in writing to pay, or reimburse Beneficiary for the payment of, any such tax or increased portion thereof when thereafter levied or assessed against the Property or the Collateral or any portion thereof. The obligations of Grantor under such agreement shall be secured hereby.

**2.19 Preservation of Lien.** Grantor shall do any and all acts which, from the character or use of the Property or the Collateral, may be reasonably necessary to protect and preserve the lien, the priority of the lien and the security of Beneficiary granted in this Deed of Trust, the specific enumerations herein not excluding the general.

**2.20 Compliance with Property Restrictions.** Grantor will faithfully perform, in all material respects, in a commercially reasonable manner, each and every covenant to be performed by Grantor under any lien or encumbrance upon or affecting the Property or the Collateral, including, without limiting the generality hereof, declarations of covenants, easements,

conditions and/or Restrictions (as defined in the Loan Agreement) and other agreements which affect the Property, in law or in equity.

2.21 Attorneys' Fees. Upon election of either Beneficiary or Trustee so to do, employment of an attorney is authorized, and payment by Grantor of all actual reasonable attorneys' fees, costs and expenses in connection with any action or actions (including the cost of evidence or search of title) which may be brought for the foreclosure of this Deed of Trust, for possession of the Property covered hereby, for the appointment of a receiver, and/or for the enforcement of any covenant or right in this Deed of Trust contained as hereinafter provided, shall be secured hereby.

2.22 Restrictions upon Transfer. Without limitation of Grantor's other obligations under this Deed of Trust, Grantor agrees to observe and comply with the terms of Section 6.17 of the Loan Agreement.

2.23 Further Assurances. Grantor agrees to execute, acknowledge and deliver such documents and take such action as Beneficiary shall determine to be necessary or desirable to further evidence, perfect or continue the perfection and/or the priority of the lien and security interest granted by Grantor herein.

2.24 Protection of Security. At the time and in the manner herein provided, Beneficiary, or Trustee upon written instructions from Beneficiary may, with prior notice to or demand upon Grantor, without releasing Grantor from any obligation hereunder and without waiving its right to declare a default as herein provided or impairing any declaration of default or election to cause the Property to be sold or any sale proceeding predicated thereon:

(a) Take action in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary and Trustee being authorized to enter upon and, after the occurrence of an Event of Default and during the continuance thereof, take possession of the Property for such purposes;

(b) Commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security therefor, the interests, rights, powers and/or duties of Trustee and/or Beneficiary hereunder, whether brought by or against Grantor, Trustee or Beneficiary;

(c) Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of either may adversely affect or appear to adversely affect the security and/or priority of this Deed of Trust, the interest of Beneficiary or the rights, powers and/or duties of Trustee and/or Beneficiary hereunder; and

(d) After the occurrence of an Event of Default which is continuing, Beneficiary is authorized, either by itself or by its agents to be appointed by it for that purpose or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take and hold possession of any portion or all of the Property and/or the Collateral, both real and personal, and exclude Grantor and all other persons therefrom; and to operate and manage the Property and/or the Collateral and rent and lease the same, perform such reasonable acts of repair or protection as may be reasonably necessary or proper to conserve the value thereof, and collect any

and all income, rents, issues, profits and proceeds therefrom, the same being hereby assigned and transferred to Beneficiary for the benefit and protection of Beneficiary; and from time to time apply and/or accumulate such income, rents, issues, profits and proceeds in such order and manner as Beneficiary or such receiver in its sole discretion shall consider advisable, to or upon the following: the expense of receivership, if any; the proper costs of upkeep, maintenance, repair and/or operation of the Property and/or the Collateral; the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust upon the indebtedness secured hereby; the taxes and assessments upon the Property and/or Collateral then due or next to become due; and/or upon the unpaid principal of such indebtedness and/or interest thereon. The collection and/or receipt of income, rents, issues, profits and/or proceeds by Beneficiary, its agent or receiver, after declaration of an Event of Default and election to cause the Property to be sold under and pursuant to the terms of this Deed of Trust, shall not affect or impair such Event of Default or declaration of Event of Default or election to cause the Property to be sold under and pursuant to the terms of this Deed of Trust, shall not affect or impair such declaration of default or election to cause the Property to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt and/or collection of any such income, rents, issues, profits and/or proceeds. Any such income, rents, issues, profits and/or proceeds in the possession of Beneficiary, its agent or receiver, at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale.

Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this Section. Except as expressly provided above, any of the actions referred to in this Section may be taken by Beneficiary irrespective of whether any notice of Default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness secured hereby.

**2.25 Indemnity.** Grantor agrees to indemnify, protect, hold harmless and defend Trustee and Beneficiary from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable out-of-pocket attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Trustee and/or Beneficiary by reason or on account of, or in connection with: (a) any willful misconduct of Grantor or any Default or Event of Default by Grantor under this Deed of Trust or any obligation secured hereby; (b) the construction, reconstruction or alteration of the Property; (c) any negligence of Grantor or any negligence or willful misconduct of any lessee or sublessee of the Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees; (d) any accident, injury, death or damage to any person or property occurring in, on or about the Property or any street, driveway, sidewalk, curb or passageway adjacent thereto (the condition of which is the responsibility of Grantor), except for the willful misconduct or gross negligence of the indemnified person; or (e) any action or proceeding to enforce this indemnity. Any amount payable to Trustee or Beneficiary under this Section shall be due and payable within ten (10) Business Days after written demand therefor and receipt by Grantor of a statement from Trustee and/or Beneficiary setting forth in reasonable detail the amount claimed and the basis therefor. Grantor's obligations under this Section shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or

proceeding is made or brought against Trustee and/or Beneficiary which is subject to the indemnity set forth in this Section, Grantor shall resist or defend against the same, if necessary in the name of Trustee and/or Beneficiary, by attorneys for Grantor's insurance carrier (if the same is covered by insurance) reasonably approved by Trustee and/or Beneficiary (as applicable) or otherwise by attorneys retained by Grantor and reasonably approved by Trustee and/or Beneficiary (as applicable). Notwithstanding the foregoing, Trustee and Beneficiary, in their discretion, if either or both of them reasonably disapprove of the attorneys provided by Grantor or Grantor's insurance carrier, may engage their own attorneys to resist or defend, or assist therein, and Grantor shall pay, or, on demand, shall reimburse, Trustee and Beneficiary for the payment of the reasonable fees and disbursements of said attorneys.

### ARTICLE 3 - ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. Grantor hereby absolutely and unconditionally assigns and transfers to Beneficiary (and has not heretofore otherwise so assigned or transferred to any other person or entity, it being understood that the Permitted Exceptions shall not be deemed to be a violation of the terms of this Article 3) all the Leases (including all security deposits, guarantees and other security at any time given as security for the performance of the obligations of the tenants thereunder), income, rents, revenues, issues, deposits, profits and proceeds of the Property and the Collateral to which Grantor may be entitled, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such income, rents, revenues, issues, deposits, profits and proceeds. This assignment of the Leases, income, rents, revenues, issues, deposits, profits and proceeds constitutes an irrevocable direction and authorization of all tenants under the Leases to pay all rent, revenues, income and profits to Beneficiary upon demand (with any such demand not to be made by Beneficiary except during the continuance of an Event of Default) and without further consent or other action by Grantor. This is an absolute assignment, not an assignment for security only, and Beneficiary's right to rents, revenues, issues and profits is not contingent on Beneficiary's possession of all or any portion of the Property. Grantor irrevocably appoints Beneficiary its true and lawful attorney, at the option of Beneficiary at any time during the continuance of an Event of Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Grantor or in the name of Beneficiary, for all such income, rents, revenues, issues, deposits, profits and proceeds and apply the same to the indebtedness secured hereby. It is understood and agreed that neither the foregoing assignment of Leases, income, rents, revenues, issues, deposits, profits and proceeds to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies under this Article 3 or under Sections 2.14 or 2.24 hereof shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise obligated, responsible or liable in any manner with respect to the Property or the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof, except as arising out of the willful misconduct, bad faith or gross negligence of Beneficiary or Trustee. Notwithstanding anything to the contrary contained herein or in the Note, so long as no Event of Default shall have occurred and is continuing, Grantor shall have a license to collect all income, rents, revenues, issues, profits and proceeds from the Property as trustee for the benefit of Beneficiary and Grantor, and Grantor shall apply the funds so collected first to the payment of the indebtedness secured pursuant to Section 1.5 above then due and payable in such manner as Beneficiary elects and thereafter to the account of Grantor. Upon the occurrence of an Event of Default and during the continuance thereof, such license shall be deemed revoked, and any rents received thereafter by Grantor shall be delivered in kind to Beneficiary. Upon the

occurrence of an Event of Default and during the continuance thereof, Grantor agrees to deliver the original copies of all Leases to Beneficiary. Upon an Event of Default, and during the continuance thereof, Grantor hereby irrevocably constitutes and appoints Beneficiary its true and lawful attorney-in-fact to enforce, in Grantor's name or in Beneficiary's name or otherwise, all rights of Grantor in the instruments, including without limitation checks and money orders, tendered as payments of rents and to do any and all things necessary and proper to carry out the purposes hereof.

## ARTICLE 4 - DEFAULTS AND REMEDIES

### A. Defaults.

4.1 Event of Default. An "Event of Default" shall have occurred hereunder if an Event of Default shall have occurred and be continuing under the Loan Agreement.

### B. Remedies.

4.1 Acceleration and Foreclosure. Upon the occurrence of an Event of Default and during the continuance thereof, then and in each such event, Beneficiary may declare all sums secured hereby immediately due and payable either by commencing an action to foreclose this Deed of Trust as a mortgage, or by the delivery to Trustee of a written declaration of default and demand for sale and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record in case of foreclosure by exercise of the power of sale. Should Beneficiary elect to foreclose by exercise of the power of sale, Beneficiary shall also deposit with Trustee this Deed of Trust, the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require, and notice of sale having been given as then required by law and after lapse of such time as may then be required by law after recordation of such notice of default, Trustee, without demand on Grantor, shall sell the Property at the time and place of sale fixed by Beneficiary in said notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed or deeds conveying the Property, or any portion thereof, so sold, but without any covenant or warranty, express or implied. The recitals in such deed or deeds of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee or Beneficiary, may purchase at such sale.

4.2 Rescission of Notice. Beneficiary, from time to time before Trustee's sale, may rescind any such notice of breach or default and of election to cause the Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for

sale, and notices of breach or default, and of election to cause the Property to be sold to satisfy the obligations secured hereby, nor otherwise affect any provision, agreement, covenant or condition of the Note, the Loan Agreement and/or of this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder or secured hereby.

4.3 Proceeds of Sale. After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of appraisal and evidence of title in connection with sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms under this Deed of Trust, the Note or the Loan Agreement and not then repaid, with accrued interest at the Default Rate as defined in the Note until paid; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

4.4 Other Security. If Beneficiary at any time holds additional security for any obligations secured hereby, it may enforce the terms hereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the indebtedness secured hereby without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security. Grantor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Property or any other property which is security for the indebtedness secured hereby shall be sold and to have any of the Property, or any other property which is security for the indebtedness secured hereby, marshalled upon any foreclosure of this Deed of Trust or of any other security for any indebtedness secured hereby.

4.5 Remedies Cumulative. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies. No delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon any Event of Default and during the continuance thereof shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein. Every power and remedy may be exercised from time to time as often as may be deemed expedient by Trustee or Beneficiary.

4.6 Appointment of Receiver. Upon the occurrence of an Event of Default, and during the continuance thereof, Beneficiary, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property or any portion thereof, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such

and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

**4.7 Other Remedies.** Upon the occurrence of any Event of Default and during the continuance thereof, Beneficiary shall be entitled to exercise all other remedies provided to Beneficiary under any of the Loan Documents or otherwise available under California law or set forth herein, including, without limitation, (a) the institution of a suit in equity or other appropriate proceedings for specific performance or an injunction against a violation of this Deed of Trust or any other Loan Document; and/or (b) termination of all other obligations of Beneficiary and all rights of Grantor under the Loan Documents. All of such remedies may be exercised without notice to or demand upon Grantor, which are expressly waived by Grantor. Beneficiary may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to Beneficiary, to make further disbursements of the Loan.

**4.8 Reinstatement.** If Grantor or any other person having a subordinate lien or encumbrance of record on the Property reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31-(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

## **ARTICLE 5 - COLLATERAL**

**5.1 Beneficiary's Rights as a Secured Party.** With respect to the security interest granted in Section 1.2, Beneficiary shall have all the rights and remedies granted to a secured party under Article 9a of the Utah Uniform Commercial Code (including, without limitation, the right at Beneficiary's sole option to, during the continuance of an Event of Default, conduct a separate or a unified sale of all or any portion of the Property and the Collateral) as well as all other rights and remedies available at law or in equity. Grantor shall, upon the demand of Beneficiary during the continuance of an Event of Default, assemble all of such Collateral and make it available to Beneficiary at the Property, which is hereby agreed to be reasonably convenient to Beneficiary and Trustee. The proceeds of any sale of any portion of the Collateral shall be applied first to the expenses of Beneficiary in retaking, holding, preparing for sale, selling or similar matters, including reasonable out-of-pocket attorneys' fees. Any sale proceeds which are applied against principal indebtedness shall, to the extent not repaying all indebtedness in full, be applied to principal in the reverse order of maturity.

**5.2 Grantor's Collections.** Until Beneficiary exercises its right to collect proceeds of the Collateral pursuant hereto, Grantor will collect with diligence any and all proceeds of the Collateral.

**5.3 Grantor's Obligations Regarding Collateral.** Grantor shall: (a) upon reasonable prior written notice, permit representatives of Beneficiary to inspect the Collateral and Grantor's books and records relating to the Collateral and make copies thereof and extracts therefrom and to arrange for verification of the amount of Collateral, under procedures acceptable to Beneficiary, directly with Grantor's debtors or otherwise at Grantor's expense; (b) promptly

notify Beneficiary of any attachment or other legal process levied against any of the Collateral and any information received by Grantor relative to the Collateral, Grantor's debtors or other persons obligated in connection therewith, which may in any way materially and adversely affect the value of the Collateral or the rights and remedies of Beneficiary in respect thereto; (c) reimburse Beneficiary upon demand for actual reasonable costs, including, without limitation, reasonable out-of-pocket attorneys' and accountants' fees, and other expenses (including without limitation any expenses incurred in any action or proceeding to enforce any such rights) incurred in collecting any sums payable by Grantor under any obligation secured hereby, or in the checking, handling and collection of the Collateral and the preparation and enforcement of any agreement relating thereto; (d) notify Beneficiary of each location at which the Collateral is or will be kept, other than for temporary processing, storage or similar purposes, and of any removal thereof to a new location, including without limitation each office of Grantor at which records relating to the Collateral are kept; (e) provide, maintain and deliver to Beneficiary certificates of insurance insuring the Collateral against loss or damage by such risks and in such amounts, forms and by such companies as Beneficiary may reasonably require and with loss payable to Beneficiary, and in the event Beneficiary takes possession of the Collateral during the continuance of an Event of Default, the insurance policy or policies and any unearned or returned premium thereon shall at the option of Beneficiary become the sole property of Beneficiary; and (f) do all acts necessary to maintain, preserve and protect all Collateral, keep all Collateral in good condition and repair and prevent any waste or unusual or unreasonable depreciation thereof; provided, however, such physical waste shall exclude (without limitation) (1) wear and tear to the Property that occurs in the ordinary course of business of the Property by Grantor or any affiliate thereof and (2) waste occurring due to a lack of available cash flow generated by the Property necessary to prevent such waste.

5.4 No Removal. Subject to the Loan Agreement, no material portion of any personal property covered by the security interest granted herein may be removed from the Property without the prior written consent of Beneficiary, unless Grantor shall concurrently replace such personal property with similar property of equivalent value on which Beneficiary has a valid first lien.

5.5 Financing Statements. If required by Beneficiary at any time during the term of this Deed of Trust, Grantor will execute and deliver to Beneficiary, in form satisfactory to Beneficiary, an additional security agreement covering all personal property of Grantor which may at any time be furnished, placed on, or annexed or made appurtenant to the Property and used, useful or held for use in the operation of the Improvements thereon. Beneficiary is hereby authorized to file any financing statement which Beneficiary deems necessary in order to perfect the security interest of Beneficiary in such personal property.

## ARTICLE 6 - MISCELLANEOUS PROVISIONS

6.1 No Waiver. By accepting payment of any sum secured hereby after its due date or in an amount less than the sum due, Beneficiary does not waive its rights either to require prompt payment when due of all other sums so secured or to declare a default as herein provided for failure to pay the total sum due.

6.2 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of all or any portion of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may: reconvey any part of the Property; consent in writing to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

6.3 Subrogation. Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of any loan secured by this Deed of Trust.

6.4 Beneficiary's Right to Enter, Inspect and Cure. Beneficiary is authorized, by itself, its contractors, agents, employees or workers, to enter at any reasonable time upon reasonable notice any part of the Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it is authorized to perform under the terms of the Loan Agreement and this Deed of Trust.

6.5 Successors in Interest and Interpretation. Subject to the provisions of Section 2.22 hereof, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note, now or hereafter and whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The word "person" shall include corporation, partnership or other form of association. Any reference in this Deed of Trust to any document, instrument or agreement creating or evidencing an obligation secured hereby shall include such document, instrument or agreement both as originally executed and as it may from time to time be modified.

6.6 Affidavit to Trustee. Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary, setting forth any fact or facts showing a default by Grantor under any of the terms or conditions of this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon.

6.7 Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust.

6.8 Trustee's Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The trust created hereby is irrevocable by Grantor.

6.9 No Obligation to Notify. Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Grantor, Beneficiary and/or Trustee shall be a party, unless brought by Trustee, or of any pending sale under any other deed of trust.

6.10 Substitution of Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county or counties

where the Property is located, substitute a successor or successors for the Trustee named herein or acting hereunder.

6.11 Waiver of Statute of Limitations. The right to plead any and all statutes of limitation as a defense to any demand secured by this Deed of Trust is hereby waived to the full extent permitted by law.

6.12 Grantor Waiver of Rights. Grantor waives, to the extent permitted by law: (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Property; (b) all rights and remedies which Grantor may have or be able to assert by reason of the laws of the State of California or the State of Utah pertaining to the rights and remedies of sureties; and (c) all rights of valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created; provided, however, nothing contained herein shall be deemed to be a waiver of Grantor's rights under Section 2924c of the California Civil Code.

6.13 Notices. All notices and demands expressly provided hereunder to be given by Beneficiary to Grantor and all notices, demands and other communications of any kind or nature whatever which Grantor may be required or may desire to give to or serve on Beneficiary shall be in writing, shall be addressed to the appropriate address set forth in this Section 6.13, or at such other place as Grantor, Beneficiary or Trustee, as the case may be, may from time to time designate in writing by ten (10) days prior written notice and shall be: (a) hand-delivered, effective upon receipt; (b) sent by United States Express Mail or by private overnight courier, effective upon receipt; (c) except for any notice of default, sent by facsimile with confirmation requested, and with a hard copy to immediately follow by the manner set forth in this Section 6.13(a), (b) or (d), and shall be deemed effective on the day of confirmed receipt of such facsimile transmission; or (d) served by certified mail, return receipt requested, deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served and shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is the earlier in time. Rejection or refusal of delivery shall be deemed to be receipt. The inability to deliver because of a changed address of which no notice was given as provided herein, shall be deemed to be receipt. The addresses of the parties are as follows:

To Grantor: Palisades Apartments, LLC  
3021 Citrus Circle, #130  
Walnut Creek, CA 94598  
Attn: Chuck Bond

With a copy to: Eisner, LLP  
9601 Wilshire, 7<sup>th</sup> Floor  
Beverly Hills, CA 90210  
Attention: Jason A. VanMeetren, Esq.

To Beneficiary: East West Bank  
135 N. Los Robles Avenue, Suite 600

Pasadena, CA 91101  
Facsimile: (626) 817-8886  
Attn: Nick Nawaz

*With a copy to:* Cox, Castle & Nicholson LLP  
12029 Century Park East, Suite 2100  
Los Angeles, California 90067  
Facsimile: (310) 284-2100  
Attn: John Matthew Trott, Esq.

6.14 Notice to Grantor. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Grantor at the address set forth above.

6.15 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender to Trustee of this Deed of Trust and the Note for cancellation and retention and upon payment of its fees, Trustee shall promptly reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.16 Releases, Extensions, Modifications and Additional Security. Without affecting the liability or obligations of any person, including Grantor, for the performance of any obligations secured hereby (excepting only any person or property otherwise expressly released in writing by Beneficiary), Beneficiary may, from time to time and without notice, release any person liable for payment of any of said indebtedness or the performance of any of said obligations, extend the time of payment or otherwise alter the terms of any of said obligations, accept additional security therefor of any kind, including trust deeds or mortgages, or alter, substitute or release any property securing said obligations.

6.17 Obligations of Grantor Joint and Several. If more than one person has executed this Deed of Trust as "Grantor," the obligations of all such persons hereunder shall be joint and several.

6.18 Headings. The headings of each paragraph are for convenience only and shall be disregarded in construing this Deed of Trust.

6.19 Sale of Participation. Beneficiary may, at any time, sell, transfer, assign the Loan secured hereby or grant participations herein and in any and all notes and other obligations secured hereby, and Beneficiary may forward to each purchaser, prospective purchaser, participant and prospective participant all documents and information which Beneficiary now has or later may acquire relating to those obligations and to Grantor, and any holders of equity interests in Grantor, whether furnished by Grantor or otherwise, as Beneficiary determines necessary or desirable.

6.20 Waiver of Jury Trial. To the extent permitted by applicable law, all parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

6.21 Governing Law. This Deed of Trust shall be construed and enforced in accordance with the laws of the State of California except that the laws of the State of Utah shall govern the creation, perfection and enforcement of the lien of this Deed of Trust on the Property and the Collateral and the procedures applicable to such enforcement.

6.22 Judicial Reference. If the waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties or, if they cannot agree, then any party may seek to have a private judge appointed in accordance with California Code of Civil Procedure §§ 638 and 640 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this Section shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this Section. The parties agree that time is of the essence in conducting the referenced proceedings. The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of the dispute or controversy in accordance with the terms hereof. The costs shall be borne equally by the parties.

6.23 Attorneys' Fees.

(a) Grantor shall reimburse Beneficiary for all reasonable attorneys' fees, costs and expenses, arising from and after the date hereof, incurred by Beneficiary in connection with the enforcement of Beneficiary's rights under this Agreement and each of the other Loan Documents, including, without limitation, reasonable attorneys' fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements, and for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees, costs and expenses incurred to protect Beneficiary's security and reasonable out-of-pocket attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) in connection with seeking relief from stay in a bankruptcy proceeding. The term "expenses", means any actual expenses incurred by

Beneficiary in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referenced above, *including but not limited to* the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Beneficiary in connection with any of those proceedings.

(b) Beneficiary shall also be entitled to its reasonable attorneys' fees, costs and expenses incurred in any post judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this agreement into any judgment on this agreement.

(c) Grantor's reimbursement obligations hereunder shall be part of the indebtedness secured by the Loan Documents.

(d) Grantor authorizes Beneficiary, at its sole option, to (i) debit the Loan on or after the date of the Closing; (ii) debit any other Grantor account with Beneficiary; or (iii) make demand upon Borrower for payment of all reasonable out-of-pocket attorneys' fees and expenses incurred by Beneficiary in connection with the negotiation and documentation of the Loan by Counsel retained by Beneficiary, which reasonable out-of-pocket attorneys' fees and expenses become due through the date of the Closing and/or after the date of the Closing.

**6.24 Complete Agreement.** The parties hereto hereby represent and acknowledge that the Loan Documents are fully integrated and contain the complete understanding and agreements of the parties with respect to the Loan and all matters relating thereto and accurately reflect the intentions of the parties. All prior agreements, negotiations, drafts and other extrinsic communications relating thereto have been incorporated into or are superseded by the terms of the Loan Documents and have no further significance or evidentiary effect.

**6.25 Disclosure.** Beneficiary shall have the right to sell or transfer the Loan and to sell participations in the Loan to any other persons or entities without the consent of or notice to Grantor. Without the consent of or notice to Grantor, Beneficiary may disclose to any prospective purchaser of the Loan, and of any securities issued or to be issued by Beneficiary and to any prospective or actual purchaser of any participation or other interest in the Loan or any other loans made by Beneficiary to Grantor (whether under this Agreement or otherwise) any financial or other information, data or material in Beneficiary's possession relating to Grantor, the Loan or the Property. Beneficiary is authorized to disclose to Title Company the terms of all Loan Documents, disbursement Applications and financial information concerning Grantor, if, in Beneficiary's sole discretion, it is necessary or advisable to do so, to enforce its rights under the Title Policy.

**6.26 Counsel.** Each party to this Agreement has been advised to consult counsel for the purpose of reviewing the form and content of this Agreement. In the event one or more of the parties to this Agreement elects for any reason not to retain counsel to review this Agreement, that party does so freely, voluntarily and at its own risk.

**6.27 Construction Loan Mortgage/Future Advances.** Grantor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Without limiting the foregoing, Grantor shall cause Beneficiary to be named as a

person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Annotated Section 38-1a-204. Grantor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property. Grantor shall, upon completion of the Improvements, promptly file a notice of completion in the State Construction Registry as permitted by Utah Code Annotated Section 38-1a-507.

6.28 UTAH STATUTE OF FRAUDS; NOTICE TO GRANTOR. PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, GRANTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

*[Signature on following page]*

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust and Security Agreement and Fixture Filing and Assignment of Leases and Rents as of the day first written above.

**GRANTOR:**

PALISADES APARTMENTS, LLC,  
a Delaware limited liability company

By: F. Matthe DiNapoli  
Name: F. Matthe DiNapoli  
Its: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Clara

On January 24, 2022, before me, TINA CASTANEDA, Notary Public, personally appeared F. Matthe DiNapoli, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

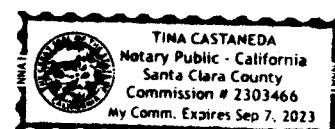
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**EXHIBIT A**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SALT LAKE CITY, IN THE COUNTY OF SALT LAKE, STATE OF UTAH, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

BEGINNING AT THE NORTHWEST CORNER OF LOT 4, BLOCK 18, PLAT "B", SALT LAKE CITY SURVEY AND RUNNING THENCE EAST 230 FEET; THENCE SOUTH 2.5 RODS; THENCE WEST 230 FEET; THENCE NORTH 2.5 RODS TO THE POINT OF BEGINNING.

**PARCEL 2:**

COMMENCING 2.5 RODS SOUTH FROM THE NORTHWEST CORNER OF LOT 4, BLOCK 18, PLAT "B", SALT LAKE CITY SURVEY; THENCE SOUTH 2.5 RODS; THENCE EAST 230 FEET; THENCE NORTH 2.5 RODS; THENCE WEST 230 FEET TO THE BEGINNING.