

THIS DOCUMENT PREPARED
BY AND WHEN RECORDED MAIL TO:

14102267 B: 11417 P: 3698 Total Pages: 26
05/05/2023 11:07 AM By: kkennington Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: FNT UTAH DOWNTOWN SLC - 170 MAIN ST STE 135 UT 84
170 MAIN ST STE 135 SALT LAKE CITY, UT 84101

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
Attention: Amy S. Cannon, Esq.

Assessor's Parcel No: 16-06-403-028

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

BORROWER: ENCORE APARTMENTS, INC.,
a Delaware corporation

TRUSTEE: FIDELITY NATIONAL TITLE COMPANY,
a California corporation

LENDER: NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY,
an Ohio corporation

Legal Description: See Exhibit A.

NOTICE TO RECORDER: THIS DOCUMENT CONSTITUTES A SECURITY AGREEMENT AND FIXTURE FILING UNDER CHAPTER 9a OF THE UTAH UNIFORM COMMERCIAL CODE AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A SECURITY AGREEMENT AND FIXTURE FILING.

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (as the same may from time to time hereafter be modified, supplemented or amended, the “Security Instrument”) is made and executed as of May 5, 2023, by ENCORE APARTMENTS, INC., a Delaware corporation (“Borrower”), having its principal office at c/o Invesco Advisers, Inc., 2001 Ross Avenue, Suite 3400, Dallas, Texas, 75201, to and in favor of FIDELITY NATIONAL TITLE COMPANY, a California corporation (“Trustee”), having an address at 170 South Main Street, Suite 135, Salt Lake City, Utah, 84101, for the benefit of NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY, an Ohio corporation, together with its successors and assigns, (“Lender”), having its principal office at One Nationwide Plaza, Fifth Floor, Columbus, Ohio 43215, ATTN: Real Estate Investments (1-05-701), as beneficiary, or at such other place as Lender may from time to time designate.

RECITALS

A. Borrower is justly indebted to Lender in the original principal sum of THIRTY-FOUR MILLION AND NO/100 Dollars (\$34,000,000.00) with interest thereon (the “Loan”), which Loan is made pursuant to that certain Loan Agreement dated of even date herewith between Borrower and Lender (as the same may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time, the “Loan Agreement”) and evidenced and represented by that certain Promissory Note of even date herewith (as the same may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time, the “Note”), both principal and interest being payable as provided therein and in the Loan Agreement, with the first payment on the Note becoming due and payable on the date of disbursement, and all amounts remaining unpaid thereon being finally due and payable on June 1, 2028 (the “Maturity Date”). The term “Note” shall include all other notes given in substitution, modification, increase, renewal or extension of the original Note described herein, in whole or in part.

B. Lender, as a condition precedent to the extension of credit and the making of the Loan, has required that Borrower provide Lender with security for the repayment of the Loan as well as for the full and prompt performance, observance and discharge by Borrower of all of the terms, provisions, agreements, covenants, conditions and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (except the Indemnity Agreement).

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

“Fixtures” means all fixtures, materials, equipment, machinery, apparatus, and other property now or hereafter attached to, installed in, or used in connection with the Improvements, including, but not limited to, furnaces, steam boilers, hot-water boilers, oil burners, pipes,

radiators, air-conditioning and sprinkler systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, and all other furnishings, tools, equipment and machinery, building supplies, materials, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of, or substitutions for, any of the foregoing, all of which property and things are hereby declared to be permanent fixtures and part of the realty conveyed herein as security for the Indebtedness.

“Improvements” means the buildings, structures and other improvements of any kind, nature or description now or hereafter erected, constructed, placed or located upon the Real Property, including, without limitation, any and all additions to, substitutions for, or replacements of such improvements.

“Obligations” means any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any Borrower Party to Lender or others as set forth in the Note, the Loan Agreement or any of the other Loan Documents.

“Property” means (a) the Real Property, and (b) the Improvements and all of Borrower’s interest, if any, in and to the following: (c) all minerals, royalties, gas rights, water, water rights, and other emblements now or hereafter located on, under or above all or any part of the Real Property; (d) the Rents; (e) any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of: (i) the exercise of the right of eminent domain; (ii) the alteration of the grade of any way, street, avenue, road, alley, passage or public place; (iii) any other injury, damage, casualty or claim relating to the taking of, or decrease in the value of, the Real Property, Improvements, Fixtures; or (iv) proceeds of insurance awards, to the extent of all amounts which may be secured by this Security Instrument at the date of any such award or payment including, but not limited to, reasonable attorneys’ fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment; (f) the Fixtures; (g) the Security Property; and (h) all agreements or contracts now or hereafter existing relating to any interest rate cap agreements, swaps or other interest hedging agreements.

“Property Record Agreement” means any reciprocal easement agreement, unilateral easement agreement, access agreement, right of way agreement or similar agreement affecting the Real Property or the Improvements, including any agreement of record that may (i) require construction, repairs, modifications, alterations or maintenance of the Improvements or any other portion of the Property or (ii) in any way limit the use and enjoyment of the Property.

“Real Property” means that certain real property described on Exhibit A attached hereto and by this reference made a part hereof, as the description of the same may be amended, modified or supplemented from time to time and any land lying between the boundaries of such tract or tracts and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed, and any tidelands or filled lands within the boundaries described on Exhibit A, as well as all rights-of way, easements, Property Record Agreements and other appurtenances thereto.

“Rents” means any and all leases, licenses, contracts, rents (including “rents” as defined in the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, § 57-26-101 et seq. (the “Utah

Rents Act”)), security deposits, license fees, royalties, issues, revenues, profits, proceeds, deposits, income and other benefits, including accounts receivable, Termination Fees, of, accruing to, or derived from the Real Property, Improvements, and any business or enterprise presently situated or hereafter operated thereon, and all of Borrower’s interest, if any, under any and all lease guaranties, letters of credit, and any other credit support furnished to Borrower in connection with any of the foregoing and any and all amounts furnished to Borrower in connection with any sales of the Property, including, but not limited to earnest money deposits.

“Security Property” means (expressly excluding any Hazardous Substances) (a) all Goods (including, without limitation, Consumer Goods, Inventory, Equipment and Farm Products), Accounts, Chattel Paper (including, without limitation, Electronic Chattel Paper and Tangible Chattel Paper), Instruments, General Intangibles (including, without limitation, Payment Intangibles and Software), Letters of Credit, Letter-of-Credit Rights, Documents, As-Extracted Collateral, Money and Deposit Accounts of every kind, and all proceeds thereof, either directly or indirectly, in connection with the use, occupancy and operation of the Real Property, Improvements, or Fixtures, including, without limitation, any and all licenses, permits or franchises, used or required in connection with such use, occupancy or operation; (b) all proceeds thereof or therefrom regardless of form, all Rents, all monetary deposits which Borrower has been required to give to any public or private utility with respect to utility services furnished to the Real Property or Improvements, all proceeds (including premium refunds) of each policy of insurance relating to the Real Property or Improvements, all Awards, all amounts deposited in escrow for the payment of Impositions, assessments, charges, ground rentals and/or premiums for policies of insurance with respect to the Property, all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Real Property or Improvements; (c) all right, title and interest of Borrower in and to all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Real Property and all products processed or obtained therefrom, and the proceeds thereof; and (d) all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Real Property or any part thereof.

“UCC” means the Uniform Commercial Code of the state in which the Property is located or, if the creation, perfection, and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Property is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Capitalized terms not otherwise defined in this Security Instrument shall have the meanings ascribed to such terms in the Loan Agreement or, if not defined in the Loan Agreement, the UCC.

(a) General Construction. Unless otherwise noted, all “Article” and “Section” references shall be to Articles or Sections of this Security Instrument. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and

not to any particular provision of this Security Instrument. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All references to the Loan Documents shall mean all such documents as they are constituted as of the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time. All of the provisions of the Loan Documents (including, without limitation the limited and full recourse provisions of Article X of the Loan Agreement), except the Indemnity Agreement, are incorporated into this Security Instrument to the same extent and with the same force as if fully set forth in this Security Instrument. In the event of any inconsistency between this Security Instrument and the Loan Agreement, the terms hereof shall be controlling, as necessary, to create, preserve and/or maintain a valid security interest upon the Property; otherwise the provisions of the Loan Agreement shall be controlling.

ARTICLE II

GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and performance of the Obligations and for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower hereby GRANTS, BARGAINS, SELLS, TRANSFERS, CONVEYS, WARRANTS, CONFIRMS, PLEDGES AND ASSIGNS with power of sale the Property, together all and singular the rights, hereditaments, and appurtenances to Trustee, IN TRUST, WITH POWER OF SALE and right of entry and possession for the benefit and security of Lender as beneficiary, all right, title and interest of BORROWER (as owner, lessee or otherwise), whether vested or contingent and whether now owned or hereafter acquired, in and to the Property, TO HAVE AND TO HOLD for the benefit of Lender and its successors and assigns forever.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Borrower hereby represents, warrants and certifies:

3.1 Warranty of Title.

(a) Borrower has good, marketable, and insurable indefeasible fee simple absolute title to the Real Property and Improvements located thereon, subject only to the Permitted Encumbrances.

(b) Borrower has full power and lawful authority to encumber and convey the Property as provided herein.

(c) This Security Instrument is and will continue to remain a valid and enforceable first deed of trust lien on and security interest in the Real Property. Borrower hereby fully warrants the title to the Property and will defend the same and the validity and priority of the lien and encumbrance of this Security Instrument against the lawful claims of all persons

whomsoever; and Borrower further warrants that the Property is free and clear of all liens and encumbrances of any kind, nature or description, save and except the Permitted Encumbrances.

ARTICLE IV

COVENANTS

4.1 Payment and Performance of Obligations. Borrower shall timely pay the Indebtedness and perform the Obligations in full pursuant to the terms, covenants and conditions of the Loan Agreement. All of the provisions in the Loan Agreement and Loan Documents are incorporated herein by reference, except the Indemnity Agreement.

4.2 Prohibition Against Conveyances, Encumbrances and Borrowing. Except as expressly permitted under the Loan Agreement, neither Borrower nor any person shall convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in: (a) all or any portion of the Property including, without limitation, the Leases; or (b) all or any ownership interest in Borrower.

4.3 Condemnation Awards and Insurance Proceeds.

(a) Borrower assigns to Lender all Awards and authorizes Lender to collect and receive all awards and compensation for any condemnation or other taking of the Property or any purchase in lieu thereof and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) Borrower assigns to Lender all proceeds of any insurance policies insuring against loss or damage to the Property. Borrower authorizes Lender to collect and receive such proceeds, to give proper receipts and acquittances therefor, and authorizes and directs the issuer of each such insurance policy to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly, subject to the terms of the Loan Agreement.

4.4 No Sale/Encumbrance. Borrower shall not make or permit any sale, conveyance, assignment, transfer, disposition, or divestiture of Borrower's title to the Property in any manner, whether voluntary or involuntary or other Disposition other than as expressly permitted pursuant to the terms of the Loan Agreement.

ARTICLE V

SECURITY AGREEMENT

5.1 Security Agreement. Borrower (as Debtor) hereby grants and assigns to Lender (as Secured Party), in order to secure full and timely payment of the Indebtedness and performance of the Obligations, a security interest in all Security Property and the Fixtures. This Security Instrument constitutes both a real property deed of trust and a security agreement in favor of Lender, as secured party, pursuant to the UCC. Except as otherwise expressly provided in this

Security Instrument, all terms in this Security Instrument relating to subsection (a) in the definition of Security Property and the grant of the foregoing security interest which are defined in the UCC but not in this Security Instrument shall have the meanings assigned to them in Chapter 9a (or, absent definition in Chapter 9a, in any other Article or Chapter) of the UCC, as those meanings may be amended, revised or replaced from time to time. The parties intend that the terms used herein which are defined in the UCC shall have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date of this Security Instrument, then such term, as used herein, shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this Security Instrument, such amendment or holding shall be disregarded in defining terms used in this Security Instrument.

5.2 Fixture Filing. This Security Instrument shall be effective as a financing statement naming Borrower as “debtor” and Lender as “secured party”, filed as a fixture filing with respect to all Fixtures on the Real Property and is to be filed for record in the real estate records in the Office of the County Recorder where the Real Property (including said Fixtures) is situated. This Security Instrument shall also be effective as a financing statement with respect to all Security Property included within the Real Property (including, without limitation, all Borrower’s right, title and interest, if any, in all oil, gas, other minerals, and other substances of value which may be extracted from the earth and all accounts arising out of the sale at the wellhead or minehead thereof), and is to be filed for record in the real estate records of the county where the Real Property is situated. The mailing address of Borrower is set forth in the preamble of this Security Instrument and the address of Lender from which information concerning the security interest may be obtained is the address of Lender set forth in the preamble of this Security Instrument. Borrower’s Organizational Number is 6134598.

ARTICLE VI

ADDITIONAL ADVANCES

6.1 Future Advances; Secured Indebtedness. This Security Instrument shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of Lender. Upon the request of Borrower, and at Lender’s option prior to release of this Security Instrument, Lender may make future advances to Borrower (“Future Advances”). All Future Advances with interest thereon shall be secured by this Security Instrument to the same extent as if such Future Advances were made on the date of the execution of this Security Instrument unless the parties shall agree otherwise in writing. Any advances or disbursements made for the benefit or protection of or the payment of taxes, assessments, levies or insurance upon the Property, with interest on such disbursements as provided herein or in the Loan Agreement, shall be added to the principal balance of the Note and collected as a part thereof. To the extent that this Security Instrument may secure more than one note, a default in the payment of any such note shall constitute a default in the payment of all such notes.

ARTICLE VII

RIGHTS AND REMEDIES

7.1 Remedies. Upon the occurrence of an Event of Default (as defined in the Loan Agreement) Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of Lender's rights and remedies pursuant to Article VIII of the Loan Agreement, including, but not limited to accelerating the Note, any other remedies available to it at law or in equity, and any remedies contained herein, including but not limited to:

(a) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, to the full extent permitted by applicable Law, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Borrower and to apply all Rents as provided in the Assignment and the right to exercise all rights of Borrower under any Property related contracts. All such costs, expenses and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a part of the Indebtedness. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution to the full extent permitted by applicable Law. Furthermore, without taking possession of any Property, Lender may, but shall have no obligation to, enter upon the Property and take such actions, and incur and pay such costs, as Lender deems appropriate, in Lender's sole discretion, in order to (i) preserve or protect the Property, including paying or otherwise resolving any liens or security interests or any threatened or claimed liens or security interests against any of the Property, making repairs, winterizing the Property, securing the Property from access by third parties, securing the Property from elements, and initiating or completing any construction for such purposes; (ii) exercise Lender's rights pursuant to Article VIII of the Loan Agreement; and (iii) pay any expenses incurred by Borrower, or any expenses incurred by Lender pursuant to the Loan Documents, with respect to the Property, including construction costs, costs incurred pursuant to any Property related contracts, and any other costs related to the Property (including insurance, title insurance, taxes, assessments, inspections, or compliance with Laws). In connection with any action taken by Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property unless such loss is caused by the gross negligence or willful misconduct of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **EXCEPT FOR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF LENDER, BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER FOR, AND TO HOLD LENDER HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE (INCLUDING**

ATTORNEYS FEES), WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. Should Lender incur any such liability, loss or damage, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Borrower shall reimburse Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation or responsibility upon Lender for the control, care, management, leasing or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any Hazardous Substances in, on or under the Property, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Any receipt of consideration received by Lender pursuant to this subsection (other than Rents) shall be applied in the same manner as provided in Section 8.3 of the Loan Agreement.

The remedies in this subsection are in addition to other remedies available to Lender and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Lender. The remedies in this Article VII are available under and governed by the real property laws of the State and are not governed by the personal property laws of the State. Any receipt of consideration received by Lender pursuant to this subsection shall be immediately credited against the Indebtedness (subject to applicable law, in such order and manner as Lender may select), and the value of said consideration shall be treated like any other payment against the Indebtedness.

(b) Foreclosure Power of Sale. Lender may cause Trustee to institute an action to foreclose this Security Instrument under the power of sale which is hereby conferred upon Trustee, such foreclosure to be accomplished in accordance with the following provisions. To the extent permitted under (and in accordance with) any Laws, the following provisions shall, as Lender may determine in its sole discretion, apply to any sales of the Property under this Article VII, whether by judicial proceeding, judgment, decree, power of sale, foreclosure or otherwise: (i) Trustee may conduct a single sale of the Property or multiple sales of any part of the Property in separate tracts or in its entirety or any other manner as Lender deems in its best interests and Borrower waives any right to require otherwise; (ii) if Lender elects more than one sale of the Property, Trustee may at its option cause the same to be conducted simultaneously or successively, on the same day or on such different days or times and in such order as Trustee may deem to be in its best interests, no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not then sold, and Borrower shall pay any and all costs and expenses incurred by Trustee in connection with each such sale; (iii) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale, in each case, without further notice unless required under applicable Law, in which case by giving notice of such postponement or adjournment, in any manner permitted by applicable

Law; or such sale may occur, without further notice, at the time fixed by the last postponement or a new notice of sale may be given; and (iv) Lender may acquire the Property and, in lieu of paying cash, may pay by crediting against the Indebtedness the amount of its bid, after deducting therefrom any sums which Lender is authorized to deduct under the provisions of the Loan Documents. After any such sale, Trustee shall deliver to the purchaser at such sale a deed conveying the Property so sold, but without any covenant or warranty, express or implied from Lender. The recitals in any such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Borrower or Lender, may purchase at such sale.

(c) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment, performance and discharge of the Obligations, without notice to Borrower, without regard to the then value of the Property or the adequacy of Lender's security and without any showing of insolvency, fraud or mismanagement on the part of Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property or any part thereof, and, at the election of Lender (in Lender's sole discretion) of the Rents, and Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(d) Lender as Purchaser. Lender may be the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured part of the Loan. Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Lender's purchase shall be applied in accordance with Section 8.3 of the Loan Agreement.

(e) Rights Relating to Leases. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid or not fully performed, the fee and leasehold estates to the Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any tenant, or any third party purchaser or otherwise. Lender may from time to time elect that any tenant subordinate the lien of this Security Instrument to any Lease by (i) unilaterally executing and recording an instrument of subordination, (ii) giving written notice to Borrower and the respective tenant of such subordination, or (iii) including the subordination in the posting for a foreclosure, and upon such election the lien of this Security Instrument shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance, (x) such subordination will not affect or be applicable to, and expressly excludes, any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests, or estates of any nature whatsoever with respect to all or any portion of the Property other than the Lease or Leases identified in such instrument of subordination; (y) Lender can make the subordination conditional so that the subordination is conditioned on the happening of any event or events, or automatically terminates upon specified events or after the passage of a stated amount of time; and (z) upon foreclosure, without limiting any other provisions contained in the Loan Documents, the purchaser at foreclosure shall have no liability or responsibility for any obligations of the landlord that

occurred or that accrued under the Lease prior to foreclosure or for any acts of prior landlords, and the tenant of such subordinated Lease shall attorn to the purchaser at foreclosure as the new landlord of the Lease with all rights of the landlord under such Lease but with only the obligations of the landlord that accrue after the foreclosure. The rights of the Lender and any purchaser at foreclosure contained in this subsection are covenants running with the land and shall be binding on all future interests in the Property, including all Leases hereafter executed, until this Security Instrument is released in full. Nothing contained in this Security Instrument, nor the exercise of any right, power, or authority herein granted to Lender shall be, or shall be construed to be, an affirmation by it of any tenancy, Lease, or option, nor an assumption (except to the extent expressly agreed in writing by Lender) of liability under any tenancy, Lease, or option, nor the subordination (except a subordination as provided in this subsection or as otherwise expressly agreed in writing by Lender) of the lien or any other rights or interests granted for the benefit of Lender under this Security Instrument.

(f) Other Rights of Lender. Should any part of the Property come into the possession of Lender, whether before or after an Event of Default, Lender may (for itself or by or through other Persons) hold, lease, manage, use or operate the Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions and improvements thereto and taking such other action as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Property. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all expenses (including the cost of any insurance, Impositions or other charges) incurred by Lender in connection with Lender's custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Lender at the Default Rate; and all such expenses, costs, taxes, interest and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

7.2 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the Property purchased, and if Borrower or Borrower's successors shall hold possession of said Property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the part of the Property so occupied and sold to such purchaser), and anyone occupying such part of the Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.3 Abandonment of Sale. If a foreclosure hereunder is commenced in accordance with Section 7.1(b) hereof, at any time before the sale, Lender may abandon the sale, and Lender may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Lender should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Property or any part thereof in accordance with the provisions of this Security Instrument or any of the other Loan Documents.

7.4 Remedies Cumulative; Non Exclusive; Etc. All rights, remedies and recourses of Lender granted in this Security Instrument, the Note, the Loan Agreement, the other Loan Documents, any other pledge of collateral or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower, the Property or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Security Instrument, shall remain in full force and effect and may be exercised at Lender's option.

7.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by Law, Borrower hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Borrower by virtue of any present (to the extent waivable by applicable Law) or future statute of limitations or "moratorium law" or other Law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such Property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, and (c) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

ARTICLE VIII

REPORTING AND WITHHOLDING REQUIREMENTS

8.1 Withholding. In the event of a foreclosure or delivery of a deed-in-lieu of foreclosure, Borrower agrees that Lender shall have the right to withhold any and all amounts necessary to comply with the requirements of Section 1445 of the Internal Revenue Code.

8.2 Transfer Tax.

(a) Covenants. Borrower covenants and agrees that, in the event of a sale or other transfer pursuant to Article VII of the Loan Agreement (a “Disposition”), it will duly complete, execute and deliver to Lender contemporaneously with its submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix the real property transfer tax (“Transfer Tax”), if any, payable by reason of such sale or other Disposition or recording of the deed evidencing such sale or other Disposition. This subsection shall apply only if this Security Instrument is outstanding after any such sale or transfer. This subsection does not give Borrower any rights to make Dispositions other than those set forth in the Loan Agreement.

(b) Payment. Borrower agrees to pay all Transfer Taxes that may hereafter become due and payable with respect to any Disposition, and in default thereof Lender shall have the right, but not the obligation, to pay the same and the amount of such payment shall be added to the Indebtedness and be secured by this Security Instrument. The provisions of this Article shall survive any Disposition, foreclosure or deed in lieu of foreclosure and the delivery of the deed in connection with any Disposition, foreclosure or deed in lieu of foreclosure. Nothing in this Article shall be deemed to deprive Lender of its rights hereunder to refuse consent to any Disposition.

(c) Foreclosure. The provisions of this Section 8.2 shall be applicable also in the event of a foreclosure or delivery of a deed in lieu of foreclosure to the extent that Lender shall, in its sole judgment and discretion, determine that any tax (including a Transfer Tax) shall be payable by it.

ARTICLE IX

MISCELLANEOUS TERMS AND CONDITIONS

9.1 Effect of Security Agreement. Borrower authorizes Lender to file and record such financing statements, descriptions of property and such further assurances as Lender, in Lender’s sole discretion, may from time to time consider necessary to create, perfect, continue and preserve the lien and encumbrances hereof, and the security interest granted herein, upon and in the Property. Without the prior written consent of Lender, Borrower shall not create or suffer to be created, pursuant to the UCC, any other security interest in such real and personal property and fixtures described herein. Upon the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the UCC, and the remedies provided for in this Security Instrument and the other Loan Documents. Lender may, at the expense of Borrower, file and record financing statements at such times and in such places as may be required or permitted by law to so create, perfect and preserve the lien and encumbrance hereof upon all of the Property.

9.2 Successors and Assigns; Terminology. The provisions hereof shall be binding upon Borrower and the heirs, personal representatives, trustees, successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower shall be joint and several.

Wherever used in this Security Instrument, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: (a) the word “Borrower” shall mean

Borrower and/or any subsequent owner or owners of the Property and (b) the word "Lender" shall mean Lender or any subsequent holder or holders of this Security Instrument;

9.3 Changes in Writing. No modification, amendment or waiver of, or consent to any departure by Borrower from, any provision of this Security Instrument will be effective unless made in a writing signed by the party to be charged, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

9.4 Notices. All notices, reports, requests or other written instruments required or permitted hereunder shall be in writing, signed by the party giving or making the same, and shall be sent in accordance with the Loan Agreement.

9.5 Lender is not a Joint Venturer or Partner. Borrower and Lender acknowledge and agree that in no event shall Lender be deemed to be a partner or joint venturer with Borrower or any member of Borrower. Without limitation of the foregoing, Lender shall not be deemed to be a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the Indebtedness, or otherwise.

9.6 Governing Law; Waiver or Jury Trial; Severability.

(a) BORROWER HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES HEREBY THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, AGAINST LENDER, ITS SUCCESSORS AND ASSIGNS, BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS OR THE LOAN, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH ANY PARTY MAY BE PERMITTED TO ASSERT THEREUNDER, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL LENDER, ITS SUCCESSORS, ASSIGNS OR PARTICIPANTS BE LIABLE FOR SPECIFIC PERFORMANCE, ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS OR OPPORTUNITY) AND BY ITS EXECUTION HEREOF, BORROWER WAIVES ANY RIGHT TO CLAIM OR SEEK ANY SUCH DAMAGES.

(b) This Security Instrument and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the internal laws of the State where the Property is located, without regard to principles of conflicts of laws. Any suit, action or other legal proceeding arising out of or relating to this Security Instrument may be brought in a court of record in the State or in the courts of the United States of America located in such State. Borrower consents to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

(c) If any clauses or provisions herein contained operate, or would prospectively operate, to invalidate this Security Instrument, then such clauses or provisions only shall be held for naught, as though not herein contained, and the remainder of this Security Instrument shall remain operative and in full force and effect.

9.7 Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Lender, or the Trustee may be removed at any time with or without cause by an instrument in writing executed by Lender. In case of the death, resignation, removal or disqualification of the Trustee or if for any reason Lender shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Lender shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Lender and recorded as required by applicable law and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. In the event the indebtedness secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute trustee provided for in the preceding sentence. Such appointment and designation by Lender or by the holder or holders of not less than a majority of the indebtedness secured hereby shall be full evidence of the right and authority to make the same and of all facts therein recited. If Lender is a corporation and such appointment is executed in its behalf by an officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee; but nevertheless, upon the written request of Lender or of the successor or substitute trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute trustee all of the estate and title in the Property of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute trustee. All references herein to the Trustee shall be deemed to refer to the Trustee (including any successor or substitute trustee appointed and designated as herein provided) from time to time acting hereunder. Borrower hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but

need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received by him hereunder. Borrower will reimburse the Trustee for, and indemnify and save him harmless against, any and all liability and expenses (including reasonable attorneys' fees) which may be incurred by him in the performance of his duties hereunder. The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Security Instrument.

9.8 Captions. The captions set forth at the beginning of the various Sections of this Security Instrument are for convenience only and shall not be used to interpret or construe the provisions of this Security Instrument.

9.9 Sole Discretion of Lender. Wherever pursuant to this Security Instrument Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

9.10 After-Acquired Property Secured. Borrower shall subject to the lien of this Security Instrument all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Property hereinabove described, hereafter acquired by or released to Borrower, or constructed, assembled or placed by Borrower on the Real Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, encumbrance, conveyance, assignment or other act by Borrower, as fully, completely and with the same effect as though now owned by Borrower and specifically described herein, but at any and all times, Borrower will execute and deliver to Lender any and all such further assurances, mortgages, deeds of trust, conveyances, security agreements, financing statements or assignments thereof or security interests therein as Lender may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Security Instrument.

9.11 Satisfaction of Security Instrument. If Borrower shall pay to Lender the Loan and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every one of the terms, covenants, conditions and agreements of the Note, this Security Instrument and all other Loan Documents, then this Security Instrument and the estates and interests hereby granted and created shall cease, terminate and be null and void, and shall be released and reconveyed of record by the Trustee at the expense of Borrower.

9.12 Further Assurances. Borrower will, at Borrower's sole cost and expense and at the reasonable request of Lender, (i) promptly correct any defect or error which may be discovered in the contents of the Note, the Indemnity Agreement or the Loan Documents to which Borrower is a party, or in the execution, acknowledgment or recordation thereof, (ii) promptly do, execute, acknowledge and deliver, any and all such further acts, deeds, conveyances, deeds of trust, trust deeds, assignments, estoppel certificates, security agreements, financing statements and continuations thereof, notices of assignment and of security interest, transfers, certificates,

assurances and other instruments as Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Security Instrument, to subject to the lien and security interest hereby created any of Borrower's properties, rights or interests covered or now or hereafter intended to be covered hereby, to perfect and maintain said lien and security interest, and to better assure, convey, grant, assign, transfer and confirm unto Lender the rights granted or now or hereafter intended to be granted to Lender hereunder or under any other instrument executed in connection with this Security Instrument or which Borrower may be or become bound to convey or assign to Lender in order to carry out the intention or facilitate the performance of the provisions of this Security Instrument; provided, however, that nothing contained in this Section 9.12 shall be construed to permit Lender to unilaterally require a change in the substantive terms and conditions of the Note, the Indemnity Agreement or the Loan Documents.

ARTICLE X

SPECIAL LOCAL PROVISIONS

In the event of any conflict between the provisions of this Article X and any other provisions of this Security Instrument or any other Loan Document, the provisions of this Article X shall control.

10.1 Water Right.

(a) Borrower shall diligently comply with any (if any) and all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 10.1, the term "Governmental Authorities" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Borrower or all or any portion of the real property subject to this Security Instrument.

(b) Borrower shall diligently place to a beneficial use any (if any) and all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Borrower cannot place any quantity of water under the Water Rights to a beneficial use, Borrower shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(c) Borrower shall promptly provide the Lender with copies of any (if any) document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(d) Borrower shall promptly pay any (if any) and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Lender with evidence of each such payment.

(e) Borrower and its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

(f) As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Security Instrument, means and included all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Property, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Borrower; subject to the assignment to Lender set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State engineer's approval of any application filed by Borrower to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Borrower now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

10.2 Assignment of Rents & Security Agreement. This Security Instrument constitutes an assignment of rents pursuant to the Utah Rents Act. This Security Instrument also constitutes a Security Agreement with Borrower being the Debtor and Lender being the Secured Party pursuant to the UCC as in effect in the state of Utah (the "Utah UCC"). This Security Instrument also constitutes and is filed as a fixture filing under Section 70A-9a-502(3) of the UCC. For purposes of *Utah Code Annotated* §§ 57-1-25 and 78B-6-901.5, Borrower agrees that the stated purpose for which this Security Instrument was given is to finance residential rental property. Borrower further agrees that none of the Property constitutes, or is the proceeds of, "farm products" as defined in Section 9a-102(34) of the UCC. To the extent that this Security Instrument is subject to the Utah Rents Act, and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Security Instrument and the provisions of the Utah Rents Act, to the extent permitted under applicable law, this Security Instrument shall control.

10.3 Mechanic's Liens; Materialmen's Liens; State Construction Registry.

(a) Borrower agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Security Instrument, for any such bill which may be legally due and payable. Borrower agrees to furnish due proof of such payment to Lender after payment and before delinquency.

(b) Borrower shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Borrower shall cause Lender 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* § 38-1a-204. Borrower shall also provide to Lender copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Borrower.

(c) Intentionally Omitted

(d) If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Security Instrument, Borrower shall provide to Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Annotated* § 38-1a-503(2)(b) such that the priority for any preconstruction services lien or a construction lien or notice with respect to any such right dates immediately after the recording of this Security Instrument.

(e) Borrower shall cause, as a condition precedent to the closing of the Loan, Lender's title insurer to insure in a manner acceptable to Lender in its sole discretion, that this Security Instrument shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Lender, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

(f) Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Encumbrances), or any part thereof or interest therein whether inferior or superior to this Security Instrument and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Borrower shall have the right to contest any such claim or lien so long as Borrower previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Borrower may (A) with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Lender) for any such lien or claim, as determined in Lender's reasonable discretion.

(g) If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Borrower and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the Default Rate.

10.4 Foreclosure; Lawsuits. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, in one or several concurrent or consecutive proceedings, to foreclose (or cause the Trustee to foreclose) the lien hereof upon the Property or any part thereof, for the Obligations, or any part thereof, by any proceedings appropriate under applicable law. Lender or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Lender's successful bid shall be credited against the Indebtedness in accordance with *Utah Code Annotated* §57-1-28(1)(b) or other applicable law. Without limiting the foregoing, Lender may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default in accordance with the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101, Trustee or Lender may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Property by the court in which such complaint is filed, and Borrower hereby consents to such appointment. Without limiting the foregoing:

(a) Lender and Trustee, if and as directed by Lender, may commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Lender's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver, or specifically enforce any of the covenants hereof.

(b) Lender may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Borrower's interest in the Property to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 through § 57-1-26 or other applicable Law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-

1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale.

(c) In the event of any inconsistencies between the terms and conditions of this Section 10.4 containing Utah state law provisions and the terms and conditions of any other part of this Security Instrument, the terms and conditions of this Section shall control and be binding. When necessary to avoid any inconsistency or to ensure compliance with Utah law, any procedures or requirements provided for in this Security Instrument that are inconsistent with those required by Utah law shall be modified by and replaced with the procedures or requirements of the laws of the State of Utah.

10.5 Application of Foreclosure Sale Proceeds. Lender shall apply the proceeds of any deed of trust foreclosure sale as follows: First: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in this Security Instrument; Second: To payment of the obligations secured by this Security Instrument; and, Third: The balance, if any, to the person or persons legally entitled to the proceeds, or Trustee, in Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

10.6 Other Costs and Fees. For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note or other Loan Documents shall constitute a part of and be entitled to the benefits of Lender's deed of trust lien upon the Property, and Borrower may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Lender may include all such amounts in any credit which lender may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument to the maximum extent permitted by applicable law.

10.7 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the Utah UCC, Lender, upon an Event of Default, may proceed under the Utah UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or

package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

10.8 Deficiency. Borrower agrees to pay any deficiency, arising from any cause, to which Lender may be entitled under applicable law after applications of the proceeds of any sale, and Lender may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. To the extent that any provision of *Utah Code Annotated* Title 57 Chapter 1, as now existing or hereafter amended, or other statute requires that the “fair market value” or “fair value” of the Property be determined as of the foreclosure date in order to enforce a deficiency against Borrower or any other party liable for repayment of the Indebtedness, the term “fair market value” or “fair value” shall include those matters required by law and the additional factors set forth below to the extent permitted by applicable law:

(a) The Property shall be valued “as is” and “with all faults” and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

(b) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

(c) Borrower shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

10.9 Rescission of Notice of Default. Lender, from time to time, before any Trustee’s sale, may rescind any notice of an Event of 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 an Event of Default and demand for sale. The exercise by Lender of such right of rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring or impair the right of Lender to execute and deliver to Trustee, as provided above, other declarations of an Event of Default and demand for sale, notices of an Event of Default and of election to cause the Property to be sold to satisfy the obligations hereof, or otherwise affect any provision, agreement, covenant or condition of the Guaranty or this Security Instrument or any of the rights, obligations or remedies of the parties hereunder.

10.10 Reinstatement. If Borrower, Borrower’s successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within 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 Lender the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Borrower payment obligations

under this Security Instrument, Borrower shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Security Instrument.

10.11 Notice. Lender and Borrower hereby request, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Property, including this Security Instrument, be mailed to their respective addresses set forth in preamble hereto.

10.12 Receiver. Lender shall, pursuant to the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101, and subject to other applicable law, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under, or through Borrower, and without regard to the solvency or insolvency of Borrower or the then-value of the Property or any other collateral for the Obligations, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable laws, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, the right and power to sell the Property, such rights and powers as Lender would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Borrower hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.

10.13 Status of the Property. Borrower acknowledges that the stated purpose for which this Security Instrument is given is to finance, refinance or construct residential rental property.

10.14 Waiver of Certain Rights. With respect to the Property, notwithstanding anything contained herein to the contrary, Borrower, to the maximum extent permitted by applicable law, waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, *Utah Code Annotated* § 78B-6-901. Notwithstanding anything to the contrary, Borrower knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Borrower under *Utah Code Annotated* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

10.15 Amendments to Utah Code Annotated. In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Instrument, this Security Instrument shall, at the sole election of Lender and to the maximum extent permitted by applicable law, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

10.16 Full Reconveyance by Trustee. Upon written request of Lender and upon payment by Borrower of Trustee's fees for all services involved in the preparation, execution and

recordation of the reconveyance, Trustee shall reconvey the Property or portions thereof then held hereunder, in whole or in part, as designated by Lender and in such portions as designated by Lender to Borrower, to the person or persons legally entitled thereto, without recourse or warranty. Lender is not obligated to request partial reconveyances except as otherwise expressly agreed in writing by Lender.

10.17 NOTICE RE ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN 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 Page Follows]

[Signature Page to Deed of Trust]

IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be executed as of the day and year first above written.

BORROWER:

ENCORE APARTMENTS, INC.,
a Delaware corporation

By: _____
Duncan Walker
Vice President

STATE OF Texas)

) ss.

COUNTY OF Dallas)

On April 27, 2023, before me, Laura Kay Reinhold, Notary Public, personally appeared Duncan Walker, 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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Laura Kay Reinhold (Seal)

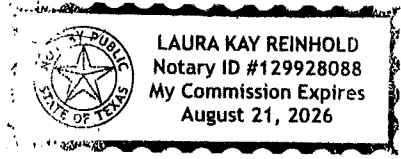


Exhibit A

Description of Real Property

For APN/Parcel ID(s): 16-06-403-028

Beginning at the Southeast corner of Lot 1, Block 37, Plat "B", Salt Lake City Survey, said Southeast corner being also South $89^{\circ}57'54''$ West along the Centerline 64.00 feet and North $00^{\circ}01'50''$ West 66.54 feet from the Brass Cap Monument at the intersection of 400 South and 500 East Streets; and running thence along the South Line of said Block 37, South $89^{\circ}58'10''$ West 305.00 feet to the East Right-of-Way Line of Denver Street; thence along said East Right-of-Way Line North $00^{\circ}01'50''$ West 275.00 feet; thence North $89^{\circ}58'10''$ East 140.00 feet to the West Line of said Lot 1, Block 37; thence along said West Line South $00^{\circ}01'50''$ East 110.00 feet; thence North $89^{\circ}58'10''$ East 165.00 feet to the East Line of said Block 37; thence along said East Line South $00^{\circ}01'50''$ East 165.00 feet to the Point of Beginning.