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INSURANCE COMPANY - NCS CHICAGO

**Recording Requested By
And When Recorded Mail To:**

Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105
Attention: Robin S. Freeman

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

MONUMENT REAL ESTATE BOUNTIFUL, LLC,
a Utah limited liability company
(as Grantor)

FIRST AMERICAN TITLE INSURANCE COMPANY
(as Trustee)

CAPITAL FUNDING, LLC,
a Maryland limited liability company
(as Agent)

Dated: February 1, 2024

Monument Health Bountiful
460 West 2600 South, Bountiful, UT 84010

Assessor's Property Tax Serial Number: 05-003-0086

THIS INSTRUMENT COVERS GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY AND SHOULD BE FILED FOR RECORD IN THE REAL PROPERTY RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. THIS INSTRUMENT SHOULD ALSO BE INDEXED AS A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING GOODS THAT ARE OR WILL BECOME FIXTURES ON THE DESCRIBED REAL PROPERTY, THE MAILING ADDRESSES OF THE SECURED PARTY AND DEBTOR ARE WITHIN.

THIS INSTRUMENT SECURES FUTURE ADVANCES.

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument"), is made as of February 1, 2024 is executed by MONUMENT REAL ESTATE BOUNTIFUL, LLC, a Utah limited liability company, whose address is 31752 S. Coast Highway, #300, Laguna Beach, California 92651 (together with its successors and assigns, "Grantor"), as trustor, to FIRST AMERICAN TITLE INSURANCE COMPANY having an address of 215 S. State Street, Suite 380, Salt Lake City, Utah 84111 (the "Trustee"), as trustee, for the benefit of CAPITAL FUNDING, LLC, a Maryland limited liability company, having its principal office at 1422 Clarkview Road, Baltimore, Maryland 21209, in its capacity as Agent (in such capacity, "Agent") for itself and such various financial institutions as are, or may from time to time become, parties thereto as Lenders (each a "Lender" and collectively, "Lenders"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

WHEREAS, Grantor is the owner and holder of fee simple title in and to all of the real estate located in the City of Bountiful, County of Davis, State of Utah, which is described on Exhibit A attached hereto and made a part hereof, which real estate forms a portion of the Mortgaged Property defined and described below;

WHEREAS, pursuant to a certain Loan Agreement of even date herewith (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among Grantor and MONUMENT REAL ESTATE MILLCREEK, LLC, a Utah limited liability company (together with Grantor, collectively, "Borrower"), various financial institutions as are, or may from time to time become, parties thereto as lenders (collectively, the "Lenders") and Agent, Borrower has agreed to borrow from Lenders a loan in the original principal amount of Sixteen Million Two Hundred Fifty-Seven Thousand Four Hundred Nine and No/100 Dollars (\$16,257,409.00) (the "Loan"), which Loan is evidenced by one or more Promissory Notes, dated as of the date hereof, made by Borrower in favor of Lenders (as the same may be amended, restated, supplemented or otherwise modified from time to time, collectively, the "Note");

WHEREAS, Grantor wishes and intends, by the execution and delivery of this Security Instrument, to (a) secure the full and punctual payment and performance of the Loan Obligations (as defined in the Loan Agreement), and (b) induce the Lenders to make the Loan.

WHEREAS, Grantor IRREVOCABLY GRANTS, CONVEYS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in trust, with power of sale, for the benefit and security of the Grantee, as agent for the benefit of the Lenders, and grants a security interest to Grantee and Trustee, all of its present and future estate, right, title and interest in and to the Land (as defined herein) located in Davis County, Utah, together with all of the other Mortgaged Property (as defined herein); and

WHEREAS, Grantor covenants that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign all of its right, title and interest in and to the Mortgaged Property, that the Mortgaged Property is unencumbered (except as otherwise

permitted by the Loan Agreement) and that Grantor will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH, that, in consideration of the premises and the sum of Ten Dollars (\$10.00) lawful money of the United States of America, to the Grantor in hand paid, the receipt and sufficiency of which are hereby acknowledged, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Grantor, Grantor by these presents does irrevocably and unconditionally grant, convey, transfer and assign to Trustee, its successors and assigns, in trust, for the benefit of Grantee, with power of sale and right of entry and possession all of Grantor's fee simple interest in the Land (as more fully described on Exhibit A attached hereto and made a part hereof) together with all of the other Mortgaged Property (as defined herein).

Notwithstanding anything to the contrary contained herein or in the other Loan Documents, none of Grantor's obligations under or pursuant to the Environmental Indemnity Agreement shall be secured by this Security Instrument.

1. **DEFINITIONS.** The following terms, when used in this Security Instrument (including when used in the above Recitals), shall have the following meanings:

(a) "Accounts" shall have the meaning set forth in the Loan Agreement.

(b) "Appurtenant Rights" means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, royalties, passages, air space, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber, mineral interests and other emoluments now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Land, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land, or any part thereof, now or hereafter.

(c) "Assignment of Rents" means that certain Assignment of Rents and Leases of even date herewith from Grantor in favor of Agent for the benefit of the Lenders.

(d) "Collateral" means, collectively, all of Grantor's right, title and interest in and to the Mortgaged Property and all of Grantor's rights as a secured party in and to the property of Manager to which Grantor holds a security interest under the terms of the Lease, all whether now owned or hereafter acquired, and including replacements, additions, acccessions, substitutions, and products thereof and thereto, and all other property which is or hereafter may become subject to a Lien in favor of Agent for the benefit of the Lenders as security for any of the Loan Obligations.

(e) "Collateral Agreements" means collectively, as applicable, any security agreements, assignments, pledges or escrow agreements granted for the benefit of Agent and/or Lenders as additional security for the Loan and Loan Obligations.

(f) "Debt" means the outstanding principal amount set forth in, and evidenced by, the Loan Agreement and the Note together with all interest accrued and unpaid thereon and all

other sums owing to Lenders in respect of the Loan under the Note, the Loan Agreement, this Security Instrument or any other Loan Document, including, without limitation, prepayment premiums, loan fees, late charges, default interest and advances to protect the security of this Security Instrument under Section 8, if any.

(g) "Equipment" means all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant, restaurant and kitchen equipment, and other fixtures and equipment of Grantor located on, attached to or used or useful in connection with any of the Land or the Facility and all renewals and replacements thereof and substitutions therefor; provided, however, that with respect to any items which are leased for the benefit of the Facility and not owned by Grantor, the Equipment shall include the leasehold interest only of Grantor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Grantor may hereafter acquire, but the foregoing shall not be construed to mean that such leasing shall be permitted hereunder and under the other Loan Documents. Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under any Leases at the Facility, except to the extent Grantor shall have rights or interests therein.

(h) "Event of Default" means the occurrence of any event listed in Section 15, hereof.

(i) "Facility" means the long term skilled nursing care facility known as "Monument Health Bountiful" located on the Land, as it may now or hereafter exist, together with any other general or specialized care facilities, if any (including any Alzheimer's care unit, subacute, and any assisted care living facility, now or hereafter operated on the Mortgaged Property).

(j) "Fixtures" means all property which is now or hereafter so attached to the Land or the Improvements as to constitute a fixture under applicable law and all renewals and replacements thereof and substitutions therefor, including, without limitation: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; and exercise equipment.

(k) "General Intangibles" means all intangible personal property of Grantor arising out of or connected with the Land or the Facility and all renewals and replacements thereof and substitutions therefore (other than Accounts, Rents, Instruments, Inventory, Money, Permits and Reimbursement Contracts).

(l) "Governmental Authority" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property and/or the Improvements or the use, operation or improvement of the Mortgaged Property.

(m) "Grantor" means all persons or entities identified as "Grantor" in the first paragraph of this Security Instrument, together with their successors and assigns.

(n) "Impositions" and "Imposition Deposits" are defined in Section 4, hereof.

(o) "Improvements" means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements.

(p) "Instruments" means all instruments, chattel paper, documents or other writings obtained by Grantor from or in connection with the operation of the Land or the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files of Grantor relating thereto).

(q) "Inventory" means all inventories of food, beverages and other comestibles held by Grantor for sale or use at or from the Land or the Facility, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Grantor for sale to or for consumption by residents, guests or patients of the Land or the Facility and all such other goods returned to or repossessed by Grantor.

(r) "Land" means the land described in Exhibit A attached hereto and incorporated herein.

(s) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property and all modifications, extensions or renewals thereof, and includes, without limitation, the Master Lease and any agreement with a Manager to operate and/or manage the Facility.

(t) "Lender" means the financial institutions who are or hereafter become parties to the Loan Agreement.

(u) "Lien" has the meaning set forth in the Loan Agreement.

(v) "Loan Agreement" means that certain Loan Agreement of even date herewith by and between Lender and Grantor.

(w) "Loan Documents" has the meaning set forth in the Loan Agreement.

(x) "Loan Obligations" has the meaning set forth in the Loan Agreement.

(y) "Management Agreement" means that certain Management Agreement of even date herewith by and between the Operator and Manager (defined below).

(z) "Manager" means MONUMENT HEALTH BOUNTIFUL, LLC, a Utah limited liability company, and any other entity engaged by Grantor or Manager to operate and/or manage the Facility, as permitted by the Loan Agreement.

(aa) "Master Lease" means that certain Lease of even date herewith by and between Grantor, as landlord, and Manager, as tenant.

(bb) "Medicaid" means that certain program of medical assistance, funded jointly by the federal government and the States, for impoverished individuals who are aged, blind and/or disabled, and/or members of families with dependent children, which program is more fully described in Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and the regulations promulgated thereunder.

(cc) "Medicare" means that certain federal program providing health insurance for eligible elderly and other individuals, under which physicians, hospitals, skilled nursing homes, home health care, and other providers are reimbursed for certain covered services they provide to the beneficiaries of such program, which program is more fully described in Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*) and the regulations promulgated thereunder.

(dd) "Money" means all monies, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Mortgaged Property.

(ee) "Mortgaged Property" means all of Grantor's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) all Appurtenant Rights;
- (3) all Equipment;
- (4) all Improvements;
- (5) all Fixtures;
- (6) all Accounts;
- (7) all General Intangibles;
- (8) all Permits (to the extent assignable);
- (9) all Instruments;

- (10) all Inventory;
 - (11) to the extent transferrable, all Reimbursement Contracts;
 - (12) all Rents;
 - (13) all Personalty;
 - (14) all Leases;
 - (15) all Money;
 - (16) all Proceeds;
 - (17) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Grantor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
 - (18) all Imposition Deposits;
 - (19) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
 - (20) to the extent transferrable, all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
 - (21) all other assets of Grantor, wherever located, whether now owned or existing or hereafter acquired or arising, including replacements, accessions, additions, substitutions, and products thereof and thereto, together with all proceeds thereof, and all other property which is or hereafter may become subject to a Lien in favor of Agent and/or Lenders as security for any of the Loan Obligations; and
 - (22) all renewals, replacements and proceeds of any of the foregoing and any substitutions therefore.
- (ff) "Note" means the Promissory Note evidencing a portion of the Loan in the amount of Sixteen Million Two Hundred Fifty-Seven Thousand Four Hundred Nine and No/100 Dollars (\$16,257,409.00), including all schedules, riders, allonges, endorsements, addenda or amendments together with any renewals, replacements, substitutions or extensions thereof.
- (gg) "Operator" means MILFORD AREA HEALTH CARE SERVICE DISTRICT #3, a Utah special service district.

(hh) "Payment" with reference to the Loan Obligations means the payment of the Debt and the performance of the Loan Obligations.

(ii) "Permits" means all licenses, permits and certificates used or useful in connection with the ownership, operation, use or occupancy of the Mortgaged Property and/or the Facility, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need, air quality permits and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy.

(jj) "Permitted Encumbrances" has the meaning set forth in the Loan Agreement.

(kk) "Person" means any person, firm, corporation, limited liability company, partnership, trust or other entity.

(ll) "Personalty" means all furniture, furnishings, Equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software), all sewer and water taps, appurtenant water stock or water rights, any Type 2 nonirrigation grandfathered water rights, contractual rights to water and all tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(mm) "Proceeds" means all awards, payments, earnings, royalties, issues, profits, liquidated claims, and proceeds (including proceeds of insurance and condemnation or any conveyance in lieu thereof) from the sale, conversion (whether voluntary or involuntary), exchange, transfer, collection, loss, damage, condemnation, disposition, substitution or replacement of any of the Collateral.

(nn) "Reimbursement Contracts" means all third-party reimbursement contracts and provider agreements for the Facility which are now or hereafter in effect with respect to residents or patients qualifying for coverage under the same, including Medicare and Medicaid and private insurance agreements, and any successor program or other similar reimbursement program and/or private insurance agreements.

(oo) "Rents" means all rent and other payments of whatever nature from time to time payable pursuant to the Leases (including, without limitation, rights to payment earned under leases for space in the Improvements for the operation of ongoing retail businesses such as newsstands, concession stands, barbershops, beauty shops, gift shops, cafeterias, dining rooms, restaurants, lounges, vending machines, physicians' offices, pharmacies, laboratories, gymnasiums, swimming pools, tennis courts, golf courses, recreational centers and specialty shops), deposits (whether for security or otherwise but excluding any resident trust accounts),

issues, profits, revenues, royalties, rights, benefits, and income of every nature of and from the Mortgaged Property and the operations conducted or to be conducted thereon.

(pp) "Single Purpose Entity" shall mean a Person which owns no interest or property other than the Mortgaged Property and which satisfies the requirements of a "Single Purpose Entity" as set forth in the Loan Agreement.

(qq) "Stock" shall mean all shares, options, warrants, general or limited partnership interests, membership interests, participations or other equivalents (regardless of how designated) in a corporation, limited liability company, partnership or any equivalent entity, whether voting or nonvoting, including, without limitation, common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended).

(rr) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(ss) "Transfer" means the conveyance, assignment, sale, transfer, mortgaging, collateral assignment, encumbrance, pledging, alienation, hypothecation, granting of a security interest in, granting of options with respect to, or other disposition 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 (i) in the Mortgaged Property or any other real or personal property of the Grantor (other than pursuant to Permitted Encumbrances or as otherwise permitted under the Loan Agreement); (ii) in the Stock of any corporation which is a Restricted Person (as defined in the Loan Agreement), a member of a Restricted Person (if the Restricted Person is a limited liability company), a partner of a Restricted Person or, if applicable, a partner of a general partner of a Restricted Person; or (iii) in a Restricted Person (or any trust of which the Restricted Person is a trustee), or, (iv) if a Restricted Person is a limited or general partnership, limited liability company, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership interest, in any Person having a direct or indirect legal or beneficial ownership in the Restricted Person, including any legal or beneficial interest in any constituent limited partner or member of the Restricted Person whether directly or through multiple tiers of ownership. The term "Transfer" shall also include, without limitation, the following: an installment sales agreement wherein a Restricted Person agrees to sell the Mortgaged Property or any other real or personal property of Grantor or Manager, or any part thereof or any interest therein, for a price to be paid in installments; an agreement by a Restricted Person leasing all or a substantial part of the Mortgaged Property or any other real or personal property of Grantor or Manager to one or more Persons (other than pursuant to the Leases permitted under the Loan Agreement) pursuant to a single transaction or related transactions, or a sale, assignment or other transfer of, or the grant of a security interest in, a Restricted Person's right, title and interest in and to any Leases or any Rent; any instrument subjecting the Mortgaged Property to a condominium regime or transferring ownership to a cooperative corporation or other form of multiple ownership or governance; the dissolution or termination of a Restricted Person,

any general partner of a Restricted Person, any general partner of any general partner of a Restricted Person, if applicable, or, if the Restricted Person is a limited liability company, any corporate member of a Restricted Person; the issuance of new Stock in any corporation which is a Restricted Person, a member of a Restricted Person (if the Restricted Person is a limited liability company), a partner of a Restricted Person or, if applicable, a partner of a general partner of a Restricted Person; or the merger or consolidation with any other Person of a Restricted Person, any general partner of a Restricted Person, any general partner of any general partner of a Restricted Person, if applicable, or, if a Restricted Person is a limited liability company, any corporate or member of a limited liability company that is a Restricted Person.

2. **UNIFORM COMMERCIAL CODE; SECURITY AGREEMENT.**

(a) This Security Instrument is also a security agreement under the Uniform Commercial Code as adopted in the State of Utah (as amended from time to time, the "UCC") for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the UCC whether acquired now or in the future, and all of Grantor's Collateral, products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Grantor hereby grants to Agent, for its benefit and the benefit of the Lenders a security interest in the UCC Collateral. Agent is authorized by Grantor to file such financing statements and any extensions, renewals and amendments thereof, and any termination statements, in such form as Agent may require to perfect or continue the perfection of this security interest. Any such financing statement may describe the collateral as "All assets of Debtor wherever located, whether now owned or hereafter existing or hereafter acquired or arising, together with all proceeds thereof" or a similar description describing all assets or all personal property of Grantor. Grantor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Agent may require. Without the prior written consent of Agent, Grantor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral, other than Permitted Encumbrances. If an Event of Default has occurred and is continuing, Agent shall have the remedies of a secured party under the UCC in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Agent may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Agent's other remedies under applicable law.

(b) This Security Instrument covers goods which are to become fixtures on the Land, and this Security Instrument constitutes and is filed as a "fixture filing" (as the term is defined in the UCC) upon such of the Mortgaged Property which is or may become fixtures. Grantor has an interest of record in the Land. For purposes of the UCC, the following information is furnished, and Grantor represents and warrants to Agent that the information in subparagraphs (1) and (2) below is correct.

(1) The name and address of the record owner of the Land described in this Security Instrument is MONUMENT REAL ESTATE BOUNTIFUL, LLC, a Utah limited liability company, 31752 S. Coast Highway, #300, Laguna Beach, CA 92651.

(2) The name and address of Grantor, and if Grantor is not an individual, type or organization and organization number of Grantor is MONUMENT REAL ESTATE

BOUNTIFUL, LLC, a Utah limited liability company, 31752 S. Coast Highway, #300, Laguna Beach, CA 92651, with a Utah organization number of 13707889.

3. GRANTOR COVENANTS.

(a) Grantor shall promptly pay and perform all Loan Obligations for which it is liable or obligated in accordance with the terms of the Loan Documents. Grantor acknowledges and agrees that this Security Instrument shall not be extinguished and that the priority of this Security Instrument shall not be altered in any way until Grantor has performed all Loan Obligations for which it is liable or obligated in accordance with the terms of the Loan Documents.

(b) At the time of the execution and delivery of this Security Instrument, Grantor is the owner of the Land in fee simple, free of any easements, liens, and encumbrances (other than Permitted Encumbrances), and will forever warrant and defend its title against any and all other claims other than Permitted Encumbrances. The lien created by this Security Instrument is and will be kept as a valid lien on the Mortgaged Property, subject only to these stated exceptions.

4. **LEASES.** Grantor shall not, without the prior written consent and approval of Agent (which consent will not be unreasonably withheld or delayed), enter into or permit any Lease except for (a) the Master Lease, and (b) that certain Health Care Facility Sublease Agreement of even date herewith by and between Manager, as sublandlord, and Operator, as subtenant; or enter into or permit any management agreement of or affecting any part of the Mortgaged Property except for the Management Agreement and that certain Administrative Services Agreement of even date herewith by and between Manager and Health Group Management, LLC, a California limited liability company, as administrator.

5. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) At the sole option of Agent, Grantor shall deposit with Agent on the day monthly installments of principal and/or interest, or both, are due under the Note (or on another day designated in writing by Agent), until Loan Obligations are paid in full, an additional amount estimated by Agent sufficient to accumulate with Agent the entire sum required to pay, when due (1) to the extent applicable, the yearly water and sewer charges which may be levied on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as Agent may require under the Loan Agreement, (3) the yearly Taxes, and (4) amounts for other charges and expenses which Agent at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Agent's and Lenders' interests, all as reasonably estimated from time to time by Agent, plus one-twelfth of such estimate. The amounts deposited under the preceding sentence are collectively referred to in this Security Instrument as the "Imposition Deposits." The obligations of Grantor for which the Imposition Deposits are required are collectively referred to in this Security Instrument as "Impositions." The amount of the Imposition Deposits shall be sufficient to enable Agent to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added plus one-twelfth of such annual estimate. Agent shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Agent are held for the purpose of paying property taxes, insurance premiums and each other obligation

of Grantor for which Imposition Deposits are required. Any waiver by Agent of the requirement that Grantor remit Imposition Deposits to Agent may be revoked by Agent, in Agent's sole and absolute discretion, at any time upon notice to Grantor.

(b) Imposition Deposits shall be held in an institution (which may be Agent, if Agent is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Agent shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Agent shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Grantor shall be entitled to receive interest earned on the Imposition Deposits. Grantor hereby pledges and grants to Agent, for its benefit and the benefit of Lenders a security interest in the Imposition Deposits as additional security for all of Grantor's obligations under this Security Instrument and the other Loan Documents. Any amounts deposited with Agent under this Section 5 shall not be trust funds, nor shall they operate to reduce Loan Obligations, unless applied by Agent for that purpose under Section 5(c).

(c) If Agent elects to require Imposition Deposits, Grantor shall direct the applicable Governmental Authority to deliver the invoices and bills for all Impositions to Agent. If Agent receives a bill or invoice for an Imposition, Agent shall pay the Imposition from the Imposition Deposits held by Agent so long as no Event of Default has occurred and is continuing. Agent shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Agent. Agent may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Agent for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Agent plus one-twelfth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Agent for payment of a specific Imposition is less than the amount reasonably estimated by Agent to be necessary plus one-twelfth of such estimate, Grantor shall pay to Agent the amount of the deficiency within fifteen (15) days after notice from Agent.

(e) If an Event of Default has occurred and is continuing, Agent may apply any Imposition Deposits, in any amounts and in any order as Agent determines, in Agent's sole discretion, to pay any Impositions or as a credit against Loan Obligations. Upon payment in full of the Loan Obligations, Agent shall refund to Grantor any Imposition Deposits held by Agent.

6. APPLICATION OF PAYMENTS. If at any time Agent receives, from Grantor or otherwise, any amount applicable to Loan Obligations which is less than all amounts due and payable at such time, then, except to the extent otherwise required by law, Agent may apply that payment in such manner and in such order of priority as Agent shall determine in Agent's sole discretion. Neither Agent's acceptance of an amount which is less than all amounts then due and payable nor Agent's application of such payment in the manner authorized in the immediately preceding sentence shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to

Loan Obligations, Grantor's obligations under this Security Instrument and the Note shall remain unchanged.

7. **USE OF PROPERTY.** Unless required by applicable law or permitted pursuant to the Loan Agreement or hereunder, Grantor shall not (a) except for any change in use approved by Agent, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any part of the Facility to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property or (d) consent to or vote in favor of the inclusion of the Mortgaged Property in any community facilities or limited improvement district or any other improvement, assessment or similar district.

8. **PROTECTION OF LENDER'S SECURITY.**

(a) If Grantor fails to perform any of its obligations under this Security Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Agent's and Lenders' security or Agent's and Lenders' rights under this Security Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Agent, at Agent's option and upon notice to Grantor may make such appearances, disburse such sums and take such actions as Agent reasonably deems necessary to perform such obligations of Grantor and to protect Lenders' interest, including (1) disbursement of reasonable fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance coverages required under the Loan Agreement, and (4) payment of amounts which Grantor has failed to pay under Section 10.

(b) Any amounts disbursed by Agent under this Section 8, under any other provision of this Security Instrument, or under any of the other Loan Documents, that treats such disbursement as being made under this Section 8, shall be added to, and become part of Loan Obligations, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Loan Agreement.

(c) Nothing in this Section 8 shall require Agent or any Lender to incur any expense or take any action.

9. **INSPECTION.** Subject to the rights of tenants under Leases, and subject to the rights of the patients or residents under any tenant resident or occupancy agreement, Agent, Lenders, their agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable advance written notice to Grantor except in an emergency or during the continuance of an Event of Default. Grantor shall use its best efforts not to materially interfere with patient care at the Facility during such inspections.

10. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 10(c) and Section 10(d), Grantor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 10(c), Grantor shall pay or cause to be paid the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added or lien imposed.

(c) As long as no Event of Default has occurred and is continuing, Grantor shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that Imposition Deposits are held by Agent pursuant to Section 5 for the purpose of paying that specific Imposition. If an Event of Default exists, Agent may exercise any rights Agent may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable.

(d) Grantor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Grantor notifies Agent of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited as determined by Agent in its sole and absolute discretion, (3) if requested by Agent, Grantor deposits with Agent cash reserves or other collateral sufficient to pay the contested Imposition and all interest and penalties, as determined by Agent in its sole and absolute discretion, (4) Grantor furnishes whatever security is required in the proceedings or is reasonably requested by Agent, which may include the delivery to Agent of the reserves established by Grantor to pay the contested Imposition and all interest and penalties, as determined by Agent in its sole and absolute discretion, as additional security, and (5) such contest operates to suspend enforcement of such Imposition.

(e) Grantor shall promptly deliver to Agent a copy of all notices of, and invoices for, Impositions, and if Grantor pays any Imposition directly, Grantor shall promptly furnish to Agent receipts evidencing such payments.

11. LIENS; ENCUMBRANCES. Grantor acknowledges that the existence of any Lien on the Mortgaged Property, other than Permitted Encumbrances or liens which are imposed in connection with Impositions being contested strictly in accordance with Section 10(d) above, whether voluntary, involuntary or by operation of law, is a "Transfer" which constitutes an Event of Default as provided under Section 14.

12. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Grantor shall, or shall cause Manager to (a) not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) not abandon the Facility, (c) restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition (ordinary wear and tear excepted), or such other

condition as Agent may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair except to the extent Agent applies such insurance proceeds or condemnation awards to reduce the Debt, (d) keep the Mortgaged Property in good repair (ordinary wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) provide for professional management of the Facility by Manager or if Manager shall no longer be managing the Facility, by a manager reasonably satisfactory to Agent, under a contract approved by Agent in writing in accordance with the Loan Agreement, and (f) give notice to Agent of and, unless otherwise directed in writing by Agent, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Agent's and Lenders' security or Agent's and Lenders' rights under this Security Instrument. Except as expressly permitted in the Loan Agreement, Grantor shall not (and shall not permit any other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty or for the sale of Inventory in the ordinary course of business.

13. CONDEMNATION.

(a) Grantor shall promptly notify Agent of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Grantor shall appear in and prosecute or defend any proceeding relating to any Condemnation unless otherwise directed by Agent in writing. Grantor authorizes and appoints Agent as attorney-in-fact for Grantor to commence, appear in and prosecute, in Agent's or Grantor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 13 shall require Agent or Lenders to incur any expense or take any action. Grantor hereby transfers and assigns to Agent, for its benefit and the benefit of Lenders all right, title and interest of Grantor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Subject to the provisions of Section 4.5 of the Loan Agreement, Agent, in its sole and absolute discretion, may apply such awards or proceeds, after the deduction of Agent's and Lenders' reasonable expenses incurred in the collection of such amounts, at Agent's option, to the restoration or repair of the Mortgaged Property or to the payment of Loan Obligations, with the balance, if any, to Grantor. In the event Agent shall apply any such awards or proceeds to the payment of the Loan, no Breakage Costs (as defined in the Loan Agreement) shall be payable by Grantor in connection with such payment. Unless Agent otherwise agrees in writing, any application of any awards or proceeds to Loan Obligations shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 5 of this Security Instrument or any Collateral Agreement, or change the amount of such installments. Grantor agrees to execute such further evidence of assignment of any awards or proceeds as Agent may require.

14. TRANSFER RESTRICTIONS.

(a) Except as otherwise permitted under this Section 14 or otherwise in accordance with the Loan Agreement, Transfers shall not be permitted. Any Transfer made in violation of the this Section shall constitute an automatic Event of Default.

(b) Notwithstanding any provision herein to the contrary, no Transfer otherwise permitted under the Loan Agreement shall occur unless Grantor shall have given Agent not less than five (5) Business Days prior notice of the intended Transfer together with a certificate of an officer of Grantor stating (i) the nature and size of the interest to be the subject of the Transfer, (ii) the name and address of the Person to which such interest shall be conveyed, sold or transferred unless such interest is to be conveyed, sold or transferred pursuant to a registered public sale pursuant to applicable securities laws, and (iii) that the proposed transaction is a bona fide sale, transfer or conveyance solely for cash or equivalent consideration, if applicable. Agent reserves the right to condition any consent required pursuant to the Loan Agreement with respect to a Transfer upon (A) the payment of all expenses incurred by Agent and Lenders as set forth below and, in connection with the Transfer of any fee interest in the Mortgaged Property, an assumption fee equal to one percent (1.0%) of the outstanding balance of the Loan, (B) Agent's approval of the financial condition, managerial capabilities and ownership structure of the proposed transferee, including requiring that the transferee of any fee interest in the Mortgaged Property be a Single-Purpose Entity, (C) if the Transfer shall result in a change in control of Grantor or the Mortgaged Property, execution of an assumption agreement by the proposed transferee, in form and content acceptable to Agent, (D) the Loan being in good standing and free from any default, and (E) if required by Agent, receipt of an Opinion of Counsel reasonably satisfactory to Agent stating that, if effected, the proposed Transfer would have no effect on the enforceability of the Security Instrument or the other Loan Documents, and would not result in the dissolution or termination of Grantor, the managing member of Grantor, if applicable, any general partner of Grantor or any general partner of any general partner of Grantor, if applicable. Each request for approval shall be accompanied by a \$3,500 nonrefundable review fee paid to the Agent in cash, which will be credited, if applicable, to the 1% assumption fee if the transfer is approved. Grantor agrees to pay on demand all expenses (including, without limitation, reasonable attorney's fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Agent in connection with the review, approval and documentation of any Transfer. In no event shall any Transfer otherwise permitted under this Section occur if such Transfer is required to be registered under the Securities Act of 1933, as amended (the "1933 Act"), or any state securities or Blue Sky laws, or offered pursuant to Rule 144A promulgated under the 1933 Act.

15. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Loan Agreement shall constitute an Event of Default under this Security Instrument.

16. REMEDIES.

(a) Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Debt (and all other Loan Obligations) shall, at the option of Agent (or upon direction of the Lenders in accordance with the Loan Agreement), immediately become due and payable without notice or demand, time being of the essence of this Security Instrument, and no omission

on the part of Agent to exercise such option when entitled to do so shall be construed as a waiver of such right.

(b) Right to Enter and Take Possession.

(1) If an Event of Default shall have occurred, Grantor, upon demand of Agent, shall forthwith surrender to Agent the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Agent or Lenders' themselves, or by such officers or agents as they may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Grantor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Grantor relating thereto.

(2) If Grantor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Agent, Agent may apply for the appointment of a receiver or obtain a judicial order, judgment or decree conferring upon Agent the right to immediate possession or requiring Grantor to deliver immediate possession of the Mortgaged Property to Agent. Grantor will pay to Agent, upon demand, all expenses of obtaining such judgment or decree, including costs and expense incurred by Agent, Lenders, their attorneys and agents, and all such expenses and costs shall, until paid, become part of Loan Obligations and shall be secured by this Security Instrument.

(3) Upon every such entering or taking of possession, Agent may, to the extent not prohibited by applicable law, hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Fixtures, Personalty and Equipment; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Grantor to the same extent as Grantor could in its own name; (iv) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Agent from time to time may determine in its sole discretion and/or (v) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Agent and Lenders, all as Agent from time to time may determine to be in Agent's and Lenders' best interest. Agent may collect and receive all the Rents, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance deemed necessary by Grantor; (D) such taxes, assessments and other similar charges as Agent or Lenders may at their option pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the actual reasonable fees, expenses and disbursements of the attorneys and agents of Agent and Lenders, Agent shall apply the remainder of the monies and proceeds so received by Agent, first, to the payment of accrued interest; second, to the payment of Imposition Deposits and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Debt then due. Anything in this Section to the contrary notwithstanding, Agent shall not incur any liability as a result of any exercise by Agent of its rights under this

Security Instrument, except due to Agent's willful misconduct or gross negligence, and Agent shall be liable to account only for the Rents actually received by Agent.

(4) Subject to the Control Agreements (defined in the Loan Agreement), as applicable, if an Event of Default shall have occurred, Agent may require that Grantor cause all of its Accounts, and cause Manager to cause all of its Accounts, to be paid to a lockbox or to one or more deposit accounts with Agent, or at Agent's option, with another financial institution approved by Agent. Grantor assigns and grants to Agent a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts, to the extent permitted by applicable law. Grantor agrees to promptly notify all of its account debtors, including the Medicaid and Medicare agencies and other account debtors pursuant to all Reimbursement Contracts, to the extent permitted under applicable law and to the extent Grantor maintains such Accounts, to make payments to one or more such deposit accounts upon Agent's request and as designated by Agent, and Grantor agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Agent may require that the deposit accounts be established so as to comply with any applicable Medicaid, Medicare and other requirements applicable to payments of any accounts receivable. Agent may cause moneys to be withdrawn from such deposit accounts and applied to Loan Obligations in such order as Agent may elect, whether or not then due. Grantor appoints Agent as Grantor's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Grantor agrees to undertake in accordance with this Section. Agent shall not be liable for failure to collect or to enforce any Accounts or for any action or omission on the part of Agent, Lenders, their officers, agents and employees in collecting or enforcing such Accounts.

(5) Whenever all Loan Obligations shall have been paid and all Events of Default shall have been cured, Agent shall surrender possession of the Mortgaged Property to Grantor, its successors and/or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur.

(c) Performance by Agent. Upon the occurrence of an Event of Default, Agent may, at its sole option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Agent or any Lender in connection therewith, with interest thereon at the Default Rate (as defined in the Loan Agreement) or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Grantor to Agent or Lenders, as applicable. Notwithstanding anything to the contrary herein, neither Agent nor any Lender shall have any obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(d) Receiver. If any Event of Default shall have occurred, Agent, to the extent permitted by applicable laws, upon application to a court of competent jurisdiction and without bond, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for Loan Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents. The receiver shall have all the rights and powers permitted under the laws of the State where the Mortgaged Property is situated. Grantor will pay unto Agent and Lenders upon demand all expenses, including receiver's fees, actual reasonable

attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Grantor's failure to pay the same, any such amounts shall be added to Loan Obligations and shall be secured by this Security Instrument. Notwithstanding the appointment of any receiver or other custodian, Agent shall be entitled, subject to the Control Agreements, as applicable, as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Security Instrument to Agent, and Agent shall have the right to offset the unpaid Loan Obligations against any such cash or deposits in such order as Agent may elect.

(e) Agent's Power of Enforcement. If an Event of Default shall have occurred, Agent may institute an action of mortgage foreclosure or, either with or without entry or taking possession as herein above provided or otherwise, proceed by suit or suits at law in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Note or the performance of any term thereof or any other right, (2) to foreclose this Security Instrument and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable law, and (3) to pursue any other remedy available to it, all as Agent shall deem most effectual for such purposes. Agent shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Agent may determine. Grantor authorizes Agent, at Agent's option, to foreclose this Security Instrument subject to the rights of any tenants of the Mortgaged Property; provided, however, that all leases executed subsequent to the recordation of this Security Instrument shall at all times be subject and subordinate to the Security Instrument and to all the terms and conditions of this Security Instrument and to the rights and liens of the holder of this Security Instrument and to all renewals, modifications, consolidations, replacements, and extensions thereof. The failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor may be asserted by Grantor to be, a defense to any proceedings instituted by Agent to recover Loan Obligations secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Upon any such foreclosure sale, Agent may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain, possess and dispose of the Mortgaged Property in its own absolute right without further accountability.

(f) Power of Sale. Grantor hereby unconditionally and irrevocably gives, grants, sets over and confirms unto the Trustee the Power of Sale, to the fullest extent such remedy is then available from and after the date hereof under the laws of the State of Utah, which Power of Sale may be unconditionally exercised at any time or times after an Event of Default, and in connection therewith, Grantor hereby (a) consents to any one or more adjournments of the sale date which Trustee may grant, consent to and/or schedule, whether or not Grantor is notified of such adjournment and (b) waives any and all objections Grantor may have to the date of sale, the place of sale, the terms of sale and any other matter selected by Trustee and/or Beneficiary. The sale by Trustee of less than the whole of the Mortgaged Property shall not exhaust the right to sell any remainder of the Mortgaged Property, and Trustee is specifically empowered to make a successive sale or sales until the whole of the Mortgaged Property shall be sold. If the proceeds of the sale of less than the whole of the Mortgaged Property is less than the Obligations secured hereby and payable under the Loan Documents, then this Mortgaged and the lien hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made. For purposes hereof, "Power of Sale" shall mean the right, power and authority of Trustee and/or Beneficiary to sell or cause the sale of the Mortgaged Property and/or

a part or parts thereof, at public sale or auction, after any Event of Default and in accordance with and pursuant to any statute or law of the state or jurisdiction in which the Mortgaged Property is located permitting the sale of property subject to a deed of trust or security agreement in a non-judicial foreclosure sale, as any such statute or law may be in effect on the date hereof, or may be hereinafter enacted and/or modified or amended, or any successor statute or statutes, and/or under and pursuant to any other laws or regulations now in effect and/or hereafter enacted, which provides for and/or enables the property encumbered by a deed of trust to be sold by a trustee and/or beneficiary and/or their respective agents and/or representatives in a public and/or private non-judicial sale.

(g) Judicial Foreclosure. If an Event of Default shall have occurred, Agent may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Mortgaged Property.

(h) Purchase by Agent or Lender. Agent or any Lender shall have the right to become the purchaser at any sale made under or by virtue of this Security Instrument, and Agent purchasing at such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the amount of the Debt owing to Agent. In the event of any such sale, the outstanding principal amount of the Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. IF THE MORTGAGED PROPERTY IS SOLD IN ACCORDANCE WITH THE TERMS OF THIS SECURITY INSTRUMENT FOR AN AMOUNT LESS THAN THE DEBT OF GRANTOR TO AGENT, THE DEFICIENCY SHALL BE DETERMINED BY THE PURCHASE PRICE AT THE SALE. Grantor waives any and all rights to file or pursue permissive counterclaims in connection with any legal action brought by Agent under this Security Instrument, the Note, or any other Loan Document. To the extent not prohibited by applicable law, Grantor waives all rights, claims, and defenses with respect to the ability of Agent to obtain a deficiency judgment.

(i) Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of any sale shall be applied as determined by Agent unless otherwise required by applicable law.

(j) Grantor as Tenant Holding Over. In the event of any such foreclosure sale, Grantor (if Grantor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable thereto.

(k) Waiver of Appraisalment, Valuation, Etc. Grantor agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Grantor hereunder, neither Grantor nor anyone claiming through or under Grantor will assert, claim or seek to take advantage of any appraisalment, redemption, valuation, stay, homestead, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement of foreclosure of this Security Instrument, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale.

(l) Discontinuance of Proceedings. In case Agent shall have proceeded to enforce any right, power or remedy under this Security Instrument by foreclosure, entry or

otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Agent, then in every such case, Grantor and Agent shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Agent shall continue as if no such proceedings had occurred.

(m) Waiver.

(1) No delay or omission by Lenders or Agent or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Security Instrument to Lenders and Agent may be exercised from time to time and as often as may be deemed expedient by Agent and/or Lenders. No consent or waiver expressed or implied by Agent or Lenders to or of any breach or default by Grantor in the performance of the obligations of Grantor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Grantor hereunder. Failure on the part of Agent or Lenders to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lenders or Agent of their rights hereunder or impair any rights, powers or remedies of Lenders or Agent hereunder.

(2) No act or omission by Agent or Lenders or the failure to perfect any lien or security interest created hereby shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Security Instrument, other Loan Documents or any other obligation of Grantor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Agent or Lenders from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then existing or any subsequent default, nor alter the lien of this Security Instrument, except as expressly provided in an instrument or instruments executed by Agent. Without limiting the generality of the foregoing, Agent may (A) grant forbearance or an extension of time for the payment of all or any portion of Loan Obligations; (B) take other or additional security for the payment of any of Loan Obligations; (C) waive or fail to exercise any right granted herein, in the Note or in other Loan Documents; (D) release any part of the Mortgaged Property from the security interest or lien of this Security Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Security Instrument or other Loan Documents; (E) consent to the filing of any map, plat or replat affecting the Land; (F) consent to the granting of any easement or other right affecting the Mortgaged Property; (G) make or consent to any agreement subordinating the security title or lien hereof, or (H) take or omit to take any action whatsoever with respect to the Note, this Security Instrument, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to this Security Instrument, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Agent or Lenders from exercising any such right, power or privilege with respect to the lien of this Security Instrument. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Agent, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with respect to the Mortgaged Property or Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original

parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Grantor, any guarantor of Loan Obligations or others.

(3) Grantor waives and relinquishes any and all rights it may have, whether at law or equity, to require Lenders or Agent to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Grantor expressly waives and relinquishes any and all rights and remedies that Grantor may have or be able to assert by reason of the laws of the Property Jurisdiction pertaining to the rights and remedies of sureties.

(4) Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any Loan Document. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Agent, Lenders or by any other party, Agent shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument and/or any other Loan Document or by applicable law. Agent shall have the right to determine the order in which any or all portions of the Loan Obligations are satisfied from the proceeds realized upon the exercise of such remedies. Grantor, for itself and all who may claim by, through, or under it, and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Security Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels (at the same time or different times) in connection with the exercise of any of the remedies provided in this Security Instrument or any other Loan Document, or afforded by applicable law.

(5) Grantor hereby covenants and agrees that it will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisal, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Security Instrument. Without limiting the foregoing:

(a) Grantor for itself and all Persons who may claim by, through, or under Grantor, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "Moratorium Laws" and all rights of reinstatement and redemption of Grantor and of all other Persons claiming by, through, or under Grantor are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law;

(b) Grantor shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Agent or any Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If Grantor is a trust, Grantor represents that the provisions of this Section were made at the express direction of Grantor's beneficiaries and the persons having

the power of direction over Grantor, and are made on behalf of the trust estate of Grantor and all beneficiaries of Grantor, as well as all other persons mentioned above.

(6) Agent shall have the right to foreclose subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Agent or any Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Grantor as a defense in any civil action instituted to collect the Loan Obligations, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(7) Grantor makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Lenders and Agent in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Grantor.

(n) Uniform Commercial Code. Agent may exercise any or all of its rights and remedies under the UCC or other applicable law as well as all other rights and remedies possessed by Agent, all of which shall be cumulative. Agent is hereby authorized and empowered, unless prohibited by applicable law, to enter onto the Property and the Facility or other place where the Personalty may be located without legal process, and to take possession of the Personalty without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of Utah. Upon demand by Agent, Grantor shall make the Personalty available to Agent at a place reasonably convenient to Agent. Agent may proceed under the UCC as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the UCC. Any notification required by the UCC shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Security Instrument at least ten (10) days before any sale or other disposition of the Personalty. Agent may choose to dispose of some or all of the property, in any combination consisting of both Personalty and Land and Improvements (the "Real Property"), in one or more public or private sales to be held in accordance with the law and procedures applicable to real property, as permitted by Article 9 of the UCC. Grantor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale of the Personalty.

(o) Suits to Protect the Mortgaged Property. Agent and Lenders shall have power to institute and maintain such suits and proceedings as it or they may deem expedient (1) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute an Event of Default under this Security Instrument; (2) to preserve or protect their interests in the Mortgaged Property and in the Rents arising therefrom; and (3) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Agent or Lenders.

(p) Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Grantor, its creditors or its properties, Agent and any Lender, to the extent permitted by law, shall be entitled

to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lenders and Agent allowed in such proceedings for the entire amount due and payable by Grantor under this Security Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Grantor hereunder after such date.

(q) Judicial Action. Agent shall have the right from time to time to sue Grantor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Security Instrument, as the same become due), without regard to whether or not any of the other Loan Obligations shall be due, and without prejudice to the right of Agent thereafter to enforce any appropriate remedy against Grantor, including an action of foreclosure or an action for specific performance, for an Event of Default existing at the time such earlier action was commenced.

(r) Laws Repealed. If any law referred to in this Security Instrument and now in force, of which Grantor or Grantor's successors and assigns and such other persons claiming any interest in the Mortgaged Property might take advantage despite this Security Instrument shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 16.

17. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. In the event a foreclosure hereunder shall be commenced, Agent may at any time before the sale of the Mortgaged Property abandon the sale, and may then institute suit for the collection of all or any of the Debt, and for the foreclosure of this Security Instrument. Election by Agent to pursue any remedy will not bar any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Security Instrument, after Grantor's failure to perform, shall not affect Agent's right to declare a default and exercise the remedies provided for herein. Nothing under this Security Instrument or otherwise shall be construed so as to limit or restrict the rights and remedies available to Agent and Lenders during an Event of Default, or in any way to limit or restrict the rights and ability of Lenders or Agent, or both, to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser of the Debt, and/or to proceed against any other collateral directly or indirectly securing the Debt.

18. **FORBEARANCE.**

(a) Agent may agree with Grantor, from time to time, at Agent's option and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of any Guarantor or other third party obligor, extend the time for payment of all or any part of Loan Obligations, reduce the payments due under this Security Instrument, the Note, or any other Loan Document, release anyone liable for the payment of any amounts under this Security Instrument, the Note, or any other Loan Document, accept a renewal of the Note, modify the terms and time of payment of Loan Obligations, consolidate the Note, join in any extension or subordination agreement, release any Mortgaged Property, take or release other or additional security, modify the rate of interest or period of amortization of the Note or change the amount of the monthly

installments payable under the Note, or otherwise modify this Security Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Agent in exercising any right or remedy under the Note, this Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Agent of payment of all or any part of Loan Obligations after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Agent's right to require prompt payment when due of all other payments on account of Loan Obligations or to exercise any remedies for any failure to make prompt payment. Enforcement by Agent of any security for Loan Obligations shall not constitute an election by Agent of remedies so as to preclude the exercise of any other right available to Lenders and Agent. Agent's receipt of any insurance and/or condemnation proceeds shall not operate to cure or waive any Event of Default.

19. **ACTIONS BY AGENT.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Agent, without liability therefor and without notice, may: (a) release all or any part of the Mortgaged Property from this Security Instrument; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.

20. **LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Grantor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Grantor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Agent in excess of the permitted amounts shall be applied by Agent to reduce the principal of Loan Obligations. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Grantor has been violated, all Debt which constitutes interest, as well as all other charges levied in connection with Loan Obligations which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

21. **WAIVER OF STATUTE OF LIMITATIONS.** Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any Loan Document.

22. **WAIVER OF MARSHALING.** Notwithstanding the existence of any other security interests in the Mortgaged Property (or in any other property held by Lenders and Agent as security for all or any part of Loan Obligations) held by Lenders and Agent or by any other party, Agent shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument, the Note, any other Loan Document or applicable law. Subject to the terms of this Security Instrument and the other Loan Documents, Agent shall have the right to determine the order in which any or all

portions of Loan Obligations are satisfied from the proceeds realized upon the exercise of such remedies. Grantor and any party who now or in the future acquires a security interest in the Mortgaged Property (or in any other property held by Lenders and Agent as security for all or any part of Loan Obligations) and who has actual or constructive notice of this Security Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property (or any other property held by Lenders and Agent as security for all or any part of Loan Obligations) be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Security Instrument.

23. **FURTHER ASSURANCES.** Grantor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Agent may require from time to time in order to better assure, grant, and convey to Lenders and Agent the rights intended to be granted, now or in the future, to Lenders and Agent under this Security Instrument and the Loan Documents.

24. **ESTOPPEL CERTIFICATE.** Within ten (10) days after a request from Agent, Grantor shall deliver to Agent a written statement, signed and acknowledged by Grantor, certifying to Agent or any person designated by Agent, as of the date of such statement: (a) that the Loan Documents are unmodified and in full force and effect (or, if there have been modification, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Grantor is not in default in paying Loan Obligations or in performing or observing any of the covenants or agreements contained in this Security Instrument or any of the other Loan Documents (or, if the Grantor is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoff or defenses known to Grantor against the enforcement of any right or remedy of Lenders and Agent under the Loan Documents; and (f) any additional facts reasonably requested by Agent.

25. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Security Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located (the "Property Jurisdiction").

(b) Each of Grantor and Agent consents to the exclusive jurisdiction of any and all state and federal courts with jurisdiction in the Property Jurisdiction over Grantor and Grantor's assets. Grantor agrees, to the extent permitted by law, that its assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States and that no assets of Grantor in the United States shall be considered part of any foreign bankruptcy estate.

(c) Each of Grantor and Agent agrees that any controversy arising under or in relation to the Note, this Security Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for Loan Obligations, or any other Loan Document. Grantor irrevocably consents to service, jurisdiction, and venue of such courts

for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

26. **NOTICE.** Any notice or other communication required or permitted to be given by this Security Instrument or the other Loan Documents or by applicable law shall be in writing and shall be deemed received: (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below) with receipt acknowledged by the recipient thereof; (b) three (3) Business Days following the date deposited in U.S. mail, postage prepaid, certified or registered, with return receipt requested; or (c) one (1) Business Day following the date deposited with Federal Express or other national overnight carrier, and in each case addressed as follows:

If to Grantor: Monument Real Estate Bountiful, LLC
31752 S. Coast Highway, Suite 300
Laguna Beach, California 92651
Attention: Spencer Samuelian

with a copy to: Sherry Meyerhoff Hanson Crance LLP
520 Newport Center Drive, Suite 1400
Newport Beach, California 92660
Attention: Andrew P. Hanson

If to Lender: Capital Funding, LLC
1422 Clarkview Road
Baltimore, MD 21209
Attention: Account Manager - Monument

with a copy to: Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, California 94123
Attention: Robin S. Freeman

Any party may change its or its attorney address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective.

27. **SINGLE PURPOSE ENTITY.** Until Loan Obligations are paid in full, Grantor shall maintain its status as a Single Purpose Entity and comply with all those covenants with respect to its status as a Single Purpose Entity as set forth in the Loan Agreement.

28. **JOINT AND SEVERAL LIABILITY.** If more than one Person signs this Security Instrument as Grantor, the obligations of such Persons shall be joint and several.

29. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.** The relationship between Agent and Grantor shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Agent and Grantor. Other than the Lenders, who shall be express third party beneficiaries of this Security

Instrument, no creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

30. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Security Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Security Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Security Instrument. Subject to the provisions of Section 16 herein, this Security Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

31. **MISCELLANEOUS PROVISIONS.** The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument. Any reference in this Security Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Security Instrument or to a section of this Security Instrument. All Exhibits attached to or referred to in this Security Instrument are incorporated by reference into this Security Instrument. Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular. As used in this Security Instrument, the term "including" means "including, but not limited to."

32. **WAIVER OF TRIAL BY JURY. EACH OF GRANTOR, AGENT AND LENDERS (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE EXIST. GRANTOR, AGENT AND LENDERS ARE AUTHORIZED TO SUBMIT THIS SECURITY INSTRUMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO ANY LOAN DOCUMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF GRANTOR'S, AGENT'S AND LENDERS' WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, EACH OF GRANTOR, AGENT AND EACH LENDER CERTIFIES THAT NEITHER GRANTOR'S, AGENT'S NOR ANY LENDER'S REPRESENTATIVES OR AGENTS HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.**

33. **WAIVER OF AUTOMATIC STAY. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, GRANTOR HEREBY AGREES THAT, IN CONSIDERATION OF LENDERS' AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR LENDERS TO MAKE THE LOAN, IN THE EVENT THAT GRANTOR SHALL (I) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION**

OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (II) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (III) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (IV) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (V) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST GRANTOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, AGENT AND LENDERS SHALL THEREUPON BE ENTITLED AND GRANTOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO AGENT AND LENDERS AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND GRANTOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

34. **SUCCESSORS AND ASSIGNS BOUND.** This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lenders, Agent and Grantor.

35. **DEED OF TRUST PROVISIONS.**

(a) Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Agent. Agent may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Agent may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all

powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Agent. The procedure provided for in this Section for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

(b) Trustee's Fees. Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

(c) Certain Rights. With the approval of Agent, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Agent) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Agent may instruct Trustee to take to protect or enforce Agent's and Lenders' rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

(d) Retention of Money. All moneys received by 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 applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

(e) Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, arising under this Security Instrument, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

(f) Substitution of Trustee; Succession Instruments. Agent may, from time to time, by a written instrument executed and acknowledged by Agent and recorded in the County in which the Mortgaged Property is located and by otherwise complying with the laws of the Property Jurisdiction, substitute a successor or successors to the Trustee named herein or acting hereunder. Without conveyance of the Mortgaged Property, a successor Trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Agent or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place

36. **PATRIOT ACT COMPLIANCE.**

(a) Grantor will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction of the Grantor and the Mortgaged Property, including those relating to money laundering and terrorism. Agent and each Lender shall have the right to audit the Grantor's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction of the Grantor and the Mortgaged Property, including those relating to money laundering and terrorism. In the event that the Grantor fails to comply with the Patriot Act or any such requirements of governmental authorities, then Agent may, at its option, cause the Grantor to comply therewith and any and all reasonable costs and expenses incurred by the Agent and/or Lenders in connection therewith shall be secured by this Security Instrument, the Guaranty Agreement and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

(b) Neither the Grantor nor any partner, member, shareholder or other constituent (each a "Constituent of Grantor") or a partner, member or shareholder of a Constituent of Grantor nor any owner of a direct or indirect interest in the Grantor (i) is listed on any Government Lists (as defined below), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (iv) is not currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act,

as amended, (iv) the Money Laundering Control Act of 1986, as amended, or the (v) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("OFAC"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lenders or Agent notified Grantor in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lenders or Agent notified Grantor in writing is now included in "Governmental Lists".

37. **ADDITIONAL WARRANTIES, REPRESENTATIONS AND COVENANTS.**

37.1 Grantor has made certain representations and warranties to Agent and the Lenders pursuant to Article III of the Loan Agreement (entitled "Grantor's Representations and Warranties") which concern or relate to Grantor, the Mortgaged Property (or the various items comprising the same as set forth in Section 1 above) the Stock of Grantor, the Facility and the Manager, which warranties and representations are incorporated herein by reference (the "Warranties and Representations"). Grantor warrants and represents to Agent that the Warranties and Representations are true and correct in all material respects and are not misleading.

37.2 Pursuant to the Loan Agreement, Grantor has agreed to perform certain Loan Obligations and engage in or refrain from engaging in certain conduct, and Grantor will engage in or refrain from engaging in certain conduct, which performance and conduct are referred to herein as the "Additional Obligations". Grantor covenants and agrees for the benefit of Agent and Lenders, that Grantor will perform all of the Additional Obligations.

38. **UTAH STATE SPECIFIC PROVISIONS.**

(a) In the event of any inconsistency or disagreement between the terms and provisions set forth in this Section and the other terms and provisions of this Security Instrument, the terms and provisions of this Article shall govern, control and supersede such other terms and provisions to the extent of such inconsistency or disagreement.

(b) Waiver. With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives, to the fullest extent permitted by applicable law, 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 (formerly codified at Utah Code Annotated § 78-37-1). Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(c) No Other Agreements. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE

INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

(d) Waiver of Trial by Jury. If Lender invokes the power of sale, then the following procedures and those outlined in Sections 57-1-19 through 57-1-36, Utah Code Ann., as hereinafter supplemented and amended, shall apply in place of any inconsistent procedures specified herein: Lender shall execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause such notice to be recorded in each county in which the Mortgaged Property or some part thereof is located. Trustee shall give notice of an Event of Default and notice of sale and shall sell the Mortgaged Property according to applicable law. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine, all in accordance with applicable law. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any previously scheduled sale to the extent permitted by law. Lender or Lender's designee may purchase the Mortgaged Property at any sale. Grantor agrees to surrender possession of the Mortgaged Property to the purchaser immediately after such sale. Trustee shall deliver to the purchaser a Trustee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorneys' fees and costs of title evidence; (ii) to all sums secured by this Deed of Trust in such order as Lender in Lender's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto, or the Trustee, in his discretion, may deposit the balance of such proceeds with the county clerk of the county in which the sale took place.

(e) Notices. Grantor requests that copies of any notice of default and notice of sale hereunder be sent to Grantor at Grantor's address stated in Section 26.

(f) Appointment of Receiver. Grantor specifically agrees that if an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, as a matter of strict right without notice and without regard to occupancy or value of any security for the debt secured hereby or the solvency of any party bound for its payment, without any showing of fraud or mismanagement on the part of Grantor, 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 to take possession of, and to operate the Mortgaged Property and to collect and apply the proceeds of the assignment of production contained herein and all other rents, issues, profits and revenues of the Mortgaged Property. The receiver shall have all of the rights, powers and protections granted to the receiver or Lender herein, or otherwise permitted under the laws of the State of Utah. Grantor will pay to the receiver or Lender upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 36(e), and all such expenses shall be secured by this Security Instrument.

(g) One Action Rule and Deficiency Statute. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor

under Utah Code Annotated §§78-37-1 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(h) Integration. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, GRANTOR IS NOTIFIED THAT THE LOAN AGREEMENT, THIS SECURITY INSTRUMENT AND OTHER DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE LOAN OBLIGATIONS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

(i) Financing Statements. Lender is hereby authorized to execute and file on behalf of Grantor, without the signature of Grantor, any financing statement deemed necessary or appropriate by Lender in order to further evidence, perfect or continue the security interest granted herein, or in any other Loan Document.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE ON NEXT PAGE

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

GRANTOR:

MONUMENT REAL ESTATE BOUNTIFUL, LLC,
a Utah limited liability company

By: Brett Robertson
Brett Robertson, VP/Secretary

The name, chief executive office and organizational identification number of Grantor (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner:
MONUMENT REAL ESTATE BOUNTIFUL, LLC
Debtor Address: 31752 S Coast Hwy, Suite 300, Laguna Beach, CA 92651
Debtor Organizational ID Number: 13707889-0160

The name and office address of Agent (as Secured Party) are:
Secured Party Name: CAPITAL FUNDING, LLC
Secured Party Address: 1422 Clarkview Road Baltimore, Maryland 21209

NOTARY ACKNOWLEDGMENT

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 Orange

On January 26, 2024, before me, Lindsay Fragoso Notary Public,
(here insert name and title of the officer)

Personally appeared Brett Robertson 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.

(Seal)

Signature: [Signature]

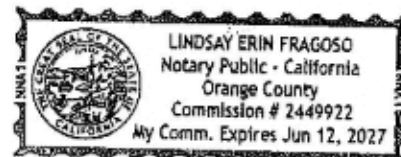


EXHIBIT A

LEGAL DESCRIPTION

BEGINNING AT A POINT ON THE EAST LINE OF 500 WEST STREET AND THE NORTH LINE OF 2600 SOUTH STREET WHICH POINT IS NORTH 0°05' WEST 33.00 FEET ALONG THE CENTER LINE OF 500 WEST STREET AND SOUTH 89°55'10" EAST 33.0 FEET FROM THE DAVIS COUNTY MONUMENT MARKING THE CENTERLINE INTERSECTION OF 500 WEST STREET AND 2600 SOUTH STREET, WHICH POINT IS ALSO DESCRIBED AS SOUTH 63°57'30" WEST 239.87 FEET AND NORTH 0°05'30" WEST 1989.40 FEET AND NORTH 0°05' WEST 33.0 FEET AND SOUTH 89°55'10" EAST 33.0 FEET FROM THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, IN THE CITY OF BOUNTIFUL AND RUNNING THENCE SOUTH 89°55'10" EAST 434.76 FEET ALONG THE NORTH LINE OF 2600 SOUTH STREET; THENCE NORTH 0°43'10" WEST 512.10 FEET TO THE SOUTH LINE OF VALERIE SUBDIVISION AT A POINT 272.80 FEET EAST OF THE SECTION LINE; THENCE SOUTH 89°34'51" WEST 429.08 FEET ALONG THE SOUTH LINE OF THE SUBDIVISION AND THE SOUTH LINE EXTENDED TO THE EAST LINE OF 500 WEST STREET; THENCE SOUTH 0°05' EAST 508.31 FEET TO THE POINT OF BEGINNING.

For Information Only:

Address: 460 West 2600 South, Bountiful, UT 84010

Tax Parcel No. 05-003-0086