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RASHELLE HOBBS
Recorder, Salt Lake County, UT
ARTISAN TITLE
BY: eCASH, DEPUTY - EF 41 P.

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1. **Title of Document:** Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents
2. **Date of Document:** April 6, 2020
3. **Grantor:** Villas at Millcreek, LLC
4. **Grantee:** Stifel Bank & Trust
5. **Statutory Mailing Addresses:**
 - Grantor:**
Villas at Millcreek, LLC
c/o Cottonwood Residential
Old Mill Corporate Center II
6340 South 3000 East, Suite 500
Salt Lake City, Utah 84121
Attention: Gregg T. Christensen, General Counsel
 - Grantee:**
Stifel Bank & Trust, as Agent
501 N. Broadway
St. Louis, Missouri 63102
Attention: Jeff Rombach
6. **Legal description:** See Exhibit A annexed to the document.
7. **Assessor's Property Tax Parcel/Account Number(s):** 16-29-428-018
8. **Reference(s) to Book(s) and Page(s):** Not Applicable

THIS DEED OF TRUST IS FOR COMMERCIAL PURPOSES AND CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS. THIS DEED OF TRUST ALSO SECURES FUTURE ADVANCES.

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME ACCORDING TO CHANGES IN THE LONDON INTERBANK OFFERED RATES (LIBOR) IN ACCORDANCE WITH THE CONSTRUCTION LOAN AGREEMENT BETWEEN BORROWER AND AGENT.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, AGENT IS THE "SECURED PARTY" AND BORROWER IS THE "DEBTOR." BORROWER IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* § 70A-9a-334(8) OR ANY SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY BORROWER IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE PROPERTY AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED). BORROWER IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Dentons US LLP
One Metropolitan Square, Suite 3000
211 N. Broadway
St. Louis, Missouri 63102-2147
Attention: Danette R. Davis

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

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (this "Deed of Trust") is made as of April 6, 2020, by **VILLAS AT MILLCREEK, LLC**, a Delaware limited liability company ("Borrower"), to **ARTISAN TITLE INSURANCE AGENCY, INC.** ("Trustee"), for the benefit of **STIFEL BANK & TRUST**, a Missouri banking corporation, its successors and assigns (the "Agent"), as agent for certain Banks.

WITNESSETH:

The Banks are making a loan to Borrower (the "Loan") in an aggregate amount not to exceed FIFTY THREE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$53,600,000.00) pursuant to that certain Construction Loan Agreement of even date herewith by and among Borrower, Agent and the Banks party thereto, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Loan Agreement"; any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement). The Loan is evidenced by those certain promissory notes in the aggregate principal amount of \$53,600,000.00) from Borrower to the Banks (as amended, modified, renewed and restated from time to time, collectively, the "Note"). The Loan is due and payable in full on the Maturity Date (as defined in the Loan Agreement). This Deed of Trust encumbers Borrower's interest in certain real estate located in the City of Millcreek, Utah, legally described on **Exhibit A** attached hereto, and payment of the Note is secured by this Deed of Trust, financing statements and other Loan Documents.

Borrower's obligations under the Loan Agreement and payment obligations under the Note are secured by this Deed of Trust, financing statements and other security documents (this Deed of Trust, the Note, the Loan Agreement, the Interest Rate Protection Agreements (as defined below), and all other documents evidencing, guaranteeing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). As used herein, "Interest Rate Protection Agreements" shall mean any agreement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated

or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation, any ISDA Master Agreement between Borrower and Agent, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time. The Loan bears interest at a variable rate of interest.

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modifications, restatements, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Deed of Trust by its terms secures, (iii) the performance and observance of the covenants and agreements contained in this Deed of Trust, the Loan Agreement, the Note and each of the other Loan Documents, and (iv) all obligations and liabilities of the Borrower to Agent under the Interest Rate Protection Agreements, if any (all of such indebtedness, obligations and liabilities identified in (i), (ii), (iii) and (iv) above being hereinafter referred to as the "Debt"), the Borrower does hereby grant, bargain, warrant, convey and confirm, sell, mortgage and assign to Trustee, its successors and assigns, in trust for the benefit of Agent, its successors and assigns, as agent for the Banks, with power of sale and right of entry and possession, a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property"

GRANTING CLAUSE I:

THE LAND located in the Millcreek, Salt Lake County, Utah, which is legally described on Exhibit A attached hereto and made a part hereof (the "Land").

GRANTING CLAUSE II:

TOGETHER WITH all right, title and interest of Borrower in buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Borrower now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (collectively, the "Improvements");

GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, development rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the

Improvements, whether now owned or hereafter acquired by the Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Deed of Trust.

GRANTING CLAUSE V:

TOGETHER WITH the following (the "Personal Property");

All personal property of every nature whatsoever now or hereafter owned by Borrower and used in connection with the Land or the Improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Contract Rights, Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Utah (the "Code");

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or Improvements

or proceeds of any sale, option or contract to sell the Land or Improvements or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of the books and records pertaining to the foregoing;

GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Borrower hereby authorizes, directs and empowers the Agent, at its option, on the Borrower's behalf, or on behalf of the successors or assigns of the Borrower, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and the Borrower agrees to execute and deliver from time to time such further instruments as may be requested by the Agent to confirm such assignment to the Agent of any such proceeds;

GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Agent;

TO HAVE AND TO HOLD the Mortgaged Property, unto Trustee for Agent, as agent for the Banks, and its successors and assigns, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION; subject, however, to the Permitted Exceptions;

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, and (ii) the Banks shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower under the provisions of the Loan Agreement, then the Agent shall, at Borrower's expense, execute and deliver to the Borrower such instruments as may be reasonably requested by the Borrower which are sufficient to release this Deed of Trust.

THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Borrower. Borrower hereby represents and warrants to Agent and the Banks as follows:

(a) The Borrower (i) is a limited liability company duly formed and validly existing under the laws of the State of Delaware and has complied with all conditions prerequisite to its doing business in the State of Utah; (ii) has the power and authority to own its property and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its property makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The Borrower has good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, subject to no liens, charges or encumbrances, other than the Permitted Exceptions; that it has good, right and lawful authority to convey the Mortgaged Property in the manner and form herein provided; that this Deed of Trust is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Exceptions; that Borrower and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all Persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) The Borrower has and shall maintain title to the collateral for the Loan, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder.

(d) No person who owns ten percent (10.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not

violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

2. Borrower's Covenants.

(a) Payment of Debt. The Borrower shall, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Borrower as provided in the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents.

(b) Repair/Maintenance. The Borrower shall (i) promptly repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed whether or not Insurance Proceeds (as hereinafter defined) are available or sufficient for that purpose; (ii) keep the Mortgaged Property in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Mortgaged Property when due; (iv) comply with all legal requirements applicable to all or any portion of the Mortgaged Property, or the use and occupancy, thereof (subject to the right of the Borrower to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Borrower or the Agent to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Without the prior written consent of the Agent, the Borrower shall not cause, suffer or permit (i) any material alteration of the Mortgaged Property, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of the Borrower or the Person responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.

(d) Compliance with Laws. The Borrower shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Borrower or to the Mortgaged Property or any part thereof.

3. Liens, Contest and Defense of Title.

(a) The Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Exceptions), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Deed of Trust, including liens for labor or materials with respect to the Mortgaged Property ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, so long as Borrower previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* Section 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* Section 38-1a-804 to release the Mortgaged Property from such lien or claim and provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Deed of Trust; and (ii) within ten (10) days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Agent in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Agent, insuring the Agent against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Borrower may deposit and keep on deposit with the Agent (or such depository as may be designated by the Agent) a sum of money sufficient, in the judgment of the Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Agent in its sole discretion to protect the priority of this Deed of Trust. In case the Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Agent may, at its option, apply any money and liquidate any securities then on deposit with the Agent (or other depository designated by the Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, upon demand, deposit with the Agent (or other depository designated by the Agent) the sum which shall (in Agent's reasonable judgment, when added to the funds then on deposit with Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Agent

has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Agent (or other depository) under this Section 3(b) shall be paid to the Borrower, provided that no Event of Default shall then exist. Notwithstanding the foregoing, Borrower may (A) with the prior written consent of Agent, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* Section 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Agent) for any such lien or claim, as determined in Agent's reasonable discretion.

(c) If the lien and security interest of the Agent in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Borrower shall immediately notify the Agent and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property. If Borrower shall fail to remove and discharge any such lien, encumbrance or charge within fifteen (15) days following the filing or recording thereof, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Agent, Agent may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Mortgaged Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Borrower of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* Section 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Agent, pay to Agent an amount equal to all costs and expenses incurred by Agent in connection with the exercise by Agent of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Loan Agreement.

(d) Borrower shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Borrower shall also provide to Agent copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Mortgaged Property that are included in the State Construction Registry and/or received by Borrower. Borrower shall cause Agent to be named as a person interested in receiving electronic notices of all filings with respect to the Mortgaged Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-204. If Agent or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Borrower covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice and Borrower shall provide to Agent written evidence acceptable to Agent and its title insurer that the lien claimant has accepted payment in full for construction work that the claimant furnished before the recording of this Deed of Trust pursuant to *Utah Code Annotated* Section 38-1a-503(2)(b) and that such lien claimant has agreed to re-file its withdrawn preliminary

notice within twenty (20) days of the date of withdrawal such that the priority for any pre-construction lien or a construction lien dates immediately after the recording of this Deed of Trust.

4. Payment and Contest of Taxes.

(a) The Borrower shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due, except to the extent Agent makes payments with Borrower's deposits under Section 23 hereof; and the Borrower shall discharge any claim or lien relating to Taxes upon the Mortgaged Property. The Borrower shall provide the Agent with copies of paid receipts for Taxes, if requested by the Agent in writing, within ten (10) days after being requested to do so by the Agent.

(b) Notwithstanding paragraph (a) of this Section, the Borrower may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) no Event of Default has occurred; (ii) such proceeding shall stay the collection of the applicable Taxes from Borrower and from the Mortgaged Property or Borrower shall have paid all of the applicable Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued, and (v) Borrower shall have deposited with Agent adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the applicable Taxes under protest, or Borrower shall have furnished such other security as may be accepted by Agent, in its sole and absolute discretion, to insure the payment of any contested Taxes, together with all interest and penalties thereon. If the Borrower fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds as hereinabove provided, the Agent may, at its option, liquidate any securities and apply the monies then on deposit with the Agent (or other depository), in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Agent's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Borrower shall forthwith, upon demand, either deposit with the Agent (or other depository designated by the Agent) a sum (or such other security as shall be reasonably satisfactory to the Agent) which when added to the funds then on deposit, shall (in the Agent's reasonable judgment) be sufficient to make such payment in full, or, if the Agent (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount satisfactory to the Agent. After final disposition

of such contest and upon the Borrower's written request and delivery to the Agent of an official bill for such Taxes, the Agent (or other depository) shall liquidate any securities and apply the monies, if any, then on deposit under this Section to the payment of such Taxes or that part thereof then unpaid and the balance, if any, in excess of the amount required to be on deposit with the Agent (or other depository) under Section 23 hereof shall be refunded to the Borrower after such final disposition, provided that no Event of Default shall then exist.

5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Agent, the Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Deed of Trust (excluding income, excise or franchise taxes imposed upon the Agent, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then the Borrower shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Agent any liability for the payment of all or any part of the Taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Agent in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Deed of Trust, the Debt, or the Agent, then, and in any such event, the Borrower, upon demand by the Agent, shall pay such Taxes, or reimburse the Agent therefor on demand, unless the Agent determines, in the Agent's sole judgment, that such payment or reimbursement by the Borrower is unlawful or that the payment might, in the Agent's judgment, constitute usury or render the Debt wholly or partially usurious; in which event the Agent may elect to declare the Debt to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Agent with applicable law.

(c) Nothing contained herein shall require the Borrower to pay any income, franchise or excise tax imposed upon the Agent, excepting only such income, franchise or excise tax which may be levied against the income of the Agent as a complete or partial substitute for Taxes required to be paid by the Borrower hereunder.

6. Insurance Coverage. For so long as this Deed of Trust is in effect, Borrower shall continuously maintain insurance in accordance with the provisions of the Loan Agreement.

7. The Agent's Performance of the Borrower's Obligations.

(a) While an Event of Default exists, the Agent may, but without any obligation to do so, upon simultaneous notice to the Borrower, make any payment or perform any act which the Borrower is required to make or perform hereunder or under any other Loan Document (whether or not the Borrower is personally liable therefor) in

any form and lawful manner deemed expedient to the Agent, including without limitation, the right to enter into possession of the Mortgaged Property, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Mortgaged Property, the Borrower and the obligations secured hereby) which the Agent deems necessary or desirable in connection therewith, all at the sole cost and expense of the Borrower. The Agent, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the Mortgaged Property, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Agent to protect the Mortgaged Property and the lien hereof, to complete construction of, rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) The Agent, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Agent to advance or expend monies for any purpose mentioned herein, or for any other purposes.

8. Security Agreement.

(a) Grant of Security Interest. Borrower hereby grants to Agent, as agent for the Banks, a security interest in the Personal Property to secure the Debt. This Deed of Trust constitutes a security agreement with respect to all Personal Property in which Agent is granted a security interest hereunder, and Agent shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Borrower hereby consents to any instrument that may be requested by Agent to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Deed of Trust or the interest of Agent in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and including without limitation such filings on "all assets" of Borrower, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, reasonable attorneys' fees and costs (of both in house and outside counsel), incurred by Agent in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes,

duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Agent as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Agent to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower. Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Agent and agrees that it will not do so without the prior written consent of Agent, subject to Borrower's rights under Section 9a-509 of the Code.

(c) Place of Business. Borrower maintains its principal executive office as set forth as the address of Borrower in Section 8(d) below, and Borrower will notify Agent in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. Portions of the Mortgaged Property are goods which are or are to become fixtures. This Deed of Trust constitutes a financing statement filed as a fixture filing within the purview of *Utah Code Annotated* § 70A.9A-502, as amended or recodified from time to time, covering any of Borrower's right, title and interest to Mortgaged Property which now is or later may become fixtures attached to the Land or Improvements, with Borrower as the "debtor" and Agent as the "secured party", and with the names and addresses of the "debtor" and the "secured party" for such purposes being:

Debtor:	Villas at Millcreek, LLC c/o Cottonwood Residential Old Mill Corporate Center II 6340 South 3000 East, Suite 500 Salt Lake City, Utah 84121 Attention: Gregg T. Christensen, General Counsel
Secured Party:	Stifel Bank & Trust 501 N. Broadway St. Louis, Missouri 63102 Attention: Jeff Rombach
Description of types (or items) of property covered by this financing statement:	All of the property described in the definition of "Mortgaged Property" which is or is to become a fixture or is as-extracted collateral
Description of real estate to which collateral is attached or upon which it is located:	Described in <u>Exhibit A</u> attached hereto

(e) Representations and Warranties. The Borrower represents and warrants that: (i) the Borrower is the record owner of the Mortgaged Property; (ii) the Borrower's principal office is located in the State of Utah; (iii) the Borrower's state of formation is

the State of Delaware; (iv) the Borrower's exact legal name is as set forth on Page 1 of this Deed of Trust; (v) the Borrower's organizational identification number is 7369338; (vi) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the liens created under the Loan Documents, (vii) the Personal Property will not be removed from the Mortgaged Property without the consent of the Agent, and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

(f) It is the express understanding and intent of the parties that as to any personal property interests subject to *Utah Code Annotated* § 70A-9a-604, Agent, upon an Event of Default, may proceed under the *Utah Code Annotated* or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

9. Restrictions on Transfer. For the purpose of protecting the Agent's security, and keeping the Mortgaged Property free from subordinate financing liens, the Borrower agrees that it, the members of Borrower, and the members, partners or stockholders of any entity controlling, directly or indirectly, Borrower, will not:

(a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to (i) the Mortgaged Property or any part thereof, or (ii) any membership interest in Borrower, resulting in a change of control of Borrower, or (iii) any membership interest, partnership interest or stock in any entity directly controlling Borrower;

(b) obtain any financing, all or a part of which, will be secured by (i) the Mortgaged Property, or (ii) any membership interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity directly controlling Borrower; or

(c) convert the Borrower from one type of legal entity into another type of legal entity,

without, in each instance, the Agent's prior written consent. Any violation of this Section 9 shall be deemed a "Prohibited Transfer."

10. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Deed of Trust:

(a) If any Event of Default (as defined therein) shall occur under the Loan Agreement; or

(b) If a Prohibited Transfer shall occur.

11. Remedies. While an Event of Default exists (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this Deed of Trust), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Agent may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; provided, however, if the Event of Default is under Section 8(d) of the Loan Agreement, all unpaid indebtedness of Borrower hereby secured shall be immediately due and payable without any action by Agent.

(b) Uniform Commercial Code. Agent shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 27 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Agent elects. The Borrower hereby agrees that if the Agent demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Agent, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Agent, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Debt and shall be payable upon demand with interest at the Default Rate.

(c) Foreclosure. Trustee or Agent may proceed to protect and enforce the rights of Agent hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise

of any power granted hereby or by law, or (ii) by the foreclosure of this Deed of Trust and in such event Trustee shall be entitled to a reasonable fee for its services and Trustee shall be entitled to a reasonable fee for the services of their attorneys and agents, and for all expenses, costs and outlays. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the laws governing foreclosure in the State of Utah (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Trustee or Agent for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Agent in any litigation or proceedings affecting this Deed of Trust, the Note or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid. Agent may cause the Mortgaged Property to be sold by Trustee to satisfy the Debt through the exercise of the nonjudicial power of sale. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Borrower except as required by law, shall sell the Mortgaged Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Agent in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Borrower nor any other Person other than Agent shall have the right to direct the order in which the Mortgaged Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Mortgaged Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, excluding Trustee, may purchase at the sale.

(d) Appointment of Receiver. Agent shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act for Borrower and for all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and

Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other Persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise. Without limiting the foregoing, the receiver shall have all of the rights and powers permitted under the laws of the State of Utah including, without limitation, the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* §78B-21-101, et seq.

(e) Taking Possession, Collecting Rents, etc. Upon demand by Agent, Borrower shall surrender to Agent and Agent may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Agent, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Agent and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Deed of Trust without Agent's prior written consent;

(iv) extend or modify any then-existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all Persons

whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Agent, to insure and reinsure the Mortgaged Property and all risks incidental to Agent's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Agent shall select, in its sole discretion; and

(vii) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Agent to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Agent shall in no way waive the right of the Agent to foreclose this Deed of Trust in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Agent hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate. Agent shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any Rents actually received by Agent. Without taking possession of the Mortgaged Property, Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Debt payable upon demand with interest thereon at the Default Rate.

(f) Indemnity. Borrower hereby agrees to indemnify, defend, protect and hold harmless the Trustee, Agent and the Banks, and their respective employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection

with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of Trustee or the Agent seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Trustee, Agent and the Banks or their respective employees, officers or agents.

12. Compliance with Foreclosure Law.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Act.

(b) If any provision of this Deed of Trust shall grant to Agent any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Agent under the Act in the absence of said provision, Agent shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 11(c) or 14 of this Deed of Trust, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

13. Waiver of Appraisal, Valuation, etc. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this Deed of Trust, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Agent may determine in its sole discretion. Agent shall have the right to become the purchaser at any sale made under or by virtue of this Deed of Trust and Agent so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Agent with the amount payable to Agent out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind.

14. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures

and expenses which may be paid or incurred by or on behalf of Agent for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Agent may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

15. Protective Advances.

(a) Advances, disbursements and expenditures made by Trustee or Agent for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Deed of Trust, constitute "Protective Advances":

(i) all advances by Agent in accordance with the terms of this Deed of Trust to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Deed of Trust or the priority thereof; or (C) enforce this Deed of Trust;

(ii) payments by Agent of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other Taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Deed of Trust; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property;

(iii) advances by Agent in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Deed of Trust; (B) in connection with any action, suit or proceeding brought by or against the Agent for the enforcement of this Deed of Trust or arising from the interest of the Agent hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Agent's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and insurance Premiums as may be authorized by this Deed of Trust; and

(vii) expenses incurred and expenditures made by Agent for any one or more of the following: (A) Premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by the Act; (B) repair or Restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Deed of Trust shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Deed of Trust is recorded.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Debt at any time;

(ii) indebtedness found due and owing to the Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to the Act.

16. Application of Proceeds. Unless otherwise required by *Utah Code Annotated* § 57-1-29 or other applicable law, the proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 11(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Section 11(c) and Section 14 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

17. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon Trustee or the Agent is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Agent.

(b) By accepting payment of any sums secured by this Deed of Trust after the due date thereof, by accepting performance of any of the Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Borrower which the Borrower was obligated but failed to perform or pay, the Agent shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Borrower's obligations under this Deed of Trust, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Deed of Trust shall be binding on the Agent unless set forth in writing signed by the Agent and any such waiver by the Agent of any Event of Default by the Borrower under this Deed of Trust shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Agent holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by Trustee or the Agent shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Note, this Deed of Trust, or any of the other Loan Documents, or any other obligation of the Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Agent from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Deed of Trust or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Agent. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Agent in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan

Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Agent by this Deed of Trust is not required to be given.

18. Successors and Assigns; Assignment.

(a) This Deed of Trust and each and every provision hereof shall be binding upon the Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other Person having an interest therein), and shall inure to the benefit of Trustee, the Agent and their successors and assigns.

(b) All of the covenants of this Deed of Trust shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a Person or Persons other than the Borrower, the Agent may, without notice to the Borrower, deal with such successor or successors in interest of the Borrower with reference to this Deed of Trust and the Debt in the same manner as with the Borrower without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will give immediate written notice to the Agent of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 9 hereof.

(c) The rights and obligations of Borrower under this Deed of Trust may not be assigned and any purported assignment by Borrower shall be null and void. Agent shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Deed of Trust and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate in all respects with Agent in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Agent or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations under this Deed of Trust and the other Loan Documents.

19. Execution of Separate Security Agreements, Financing Statements, etc.; Estoppel Letter; Corrective Documents.

(a) The Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Agent shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Agent all property mortgaged hereby or property intended so to be, whether now owned by the Borrower or hereafter acquired. Without limitation of the foregoing, the Borrower will assign to the Agent, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory

to the Agent, but no such assignment shall be construed as a consent by the Agent to any agreement, contract, license or permit or to impose upon the Agent any obligations with respect thereto.

(b) From time to time, the Borrower will furnish, within ten (10) Business Days after request from the Agent, a written and duly acknowledged statement of the amount due under the Note and this Deed of Trust and whether any alleged offsets or defenses exist against the Debt.

(c) The Borrower and the Agent shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Agent or the Borrower, as the case may be, to correct such defect, error or omission.

20. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Agent shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

21. Governing Law. The validity, enforcement and interpretation of this Deed of Trust shall for all purposes be governed by and construed in accordance with the laws of the State in which the Mortgaged Property is located, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

22. Business Loan.

(a) The Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the Loan is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 *et seq.*

(b) All rights, remedies and powers provided by this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable under the provisions of any applicable law.

23. Escrow Deposits. While an Unmatured Default or Event of Default exists, and without limiting the effect of Sections 4 and 5 hereof, the Agent may require that the Borrower pay to the Agent on the first business day of each calendar month an amount equal to one-twelfth (1/12th) of what the Agent estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required pursuant to the Loan Agreement

("Premiums") and to enable the Agent to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to the Agent additional sums necessary to pay the Premiums and Taxes. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Agent, and no interest shall be payable thereon. In the event that the Borrower does not pay such sums for Premiums and Taxes, then, while an Event of Default exists, the Agent may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by the Agent shall constitute additional Debt hereunder and shall be payable by Borrower to Agent on demand with interest thereon from the date of disbursement by Agent at Default Rate until repaid to Agent. If an Event of Default occurs, the Agent shall have the right, at its election, to apply any amounts so held under this Section against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. The Borrower will furnish to the Agent bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

24. Assignment of Leases and Other Agreements Affecting the Mortgaged Property. In order to further secure payment of the Debt and the observance, performance and discharge of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Agent all of the Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases, or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even date herewith from Borrower to and for the benefit of Agent. Unless and until an Event of Default occurs, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Deed of Trust) as and when they become due and payable. Neither these assignments nor Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Deed of Trust to any of the rights of any tenant of all or any part of the Mortgaged Property, or to subject Agent to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease unless and until Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

25. Inspection of Mortgaged Property and Records. Agent and its representatives and agents shall have the right to inspect the Mortgaged Property and all books, records and documents relating thereto in accordance with Section 7.2 of the Loan Agreement.

26. Environmental Matters. Concurrently herewith, Borrower and Guarantors shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Agent (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Deed of Trust.

27. Notices. All notices or other written communications hereunder shall be deemed to have been properly given if provided in accordance with the Loan Agreement. Notices to Trustee shall be addressed as follows:

Artisan Title Insurance Agency, Inc
6340 South 3000 East #650
Cottonwood Heights, Utah 84121

28. Releases.

(a) Upon payment in full of all sums due under the Note, this Deed of Trust and the other Loan Documents, the Agent shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Deed of Trust.

(b) The Agent may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Deed of Trust without in any manner affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Mortgaged Property not so released.

29. Single Asset Borrower. Borrower was organized solely for the purpose of owning, developing, managing and disposing of the Mortgaged Property and does not own any real property other than the Mortgaged Property and does not operate any business other than the development, construction, ownership, management and operation of the Mortgaged Property. Borrower shall not during the term of the Loan, including any extensions, modifications, renewals or refinancings thereof, acquire any real property or assets other than the Mortgaged Property, operate any business other than the acquisition, development, management and disposition of the Mortgaged Property, or incur any liability or obligation other than those incurred in the ownership and operation of the Mortgaged Property. Borrower will not commingle any of its funds or assets with those of any other entity and has held, and will hold, all of its assets and conduct all of its business in its own name. Borrower has paid and will pay all of its liabilities out of its own funds and assets. Borrower has allocated and will allocate fairly and reasonably any overhead for shared office space and will use separate stationery, invoices and checks in connection with the conduct of its business. Borrower has not entered into and will not enter into, or be a party to, any transaction with any of its equity interest holders or its affiliates, except in the ordinary course of its business and on terms which are intrinsically fair and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party. Borrower will not engage in, seek, or consent to any dissolution, winding up or liquidation, without the express consent of Agent. Borrower's articles of organization and operating agreement limit its purpose to the acquisition, development, management, operation and disposition of the Mortgaged Property, and such purposes shall not be amended without the prior written consent of Agent, which consent may be withheld by Agent in its sole and absolute discretion. Borrower shall not divide into multiple entities or series pursuant to Section 18-217 of the Delaware Limited Liability Company Act or otherwise.

30. Indemnification by the Borrower. The Borrower shall protect and indemnify the Agent, the Banks and Trustee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against any of them or the members, partners, stockholders, directors, officers, agents or employees of any of them by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or

damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Borrower or any Guarantor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Deed of Trust, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, or any Guarantor, or any other Persons directly or indirectly liable for the payment of the Debt, (d) any failure on the part of the Borrower to perform or comply with (i) any other agreement executed by the Borrower or any Guarantor, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Agent in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Agent and/or the Banks attacking the validity, priority or enforceability of this Deed of Trust, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower or any other Persons directly or indirectly liable for the payment of the Debt. Any amounts payable to the Agent or the Banks under this paragraph shall bear interest at the Default Rate and shall be secured by this Deed of Trust. In the event any action, suit or proceeding is brought against the Agent or the Banks, or the members, partners, stockholders, directors, officers, agents or employees of any of them by reason of any such occurrence, the Borrower, upon the request of the Agent and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and approved by the Agent. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Deed of Trust.

31. OFAC Covenant. Borrower shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns ten percent (10.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders, (ii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

32. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Deed of Trust.

(b) Captions and Pronouns. The captions and headings of the various Sections of this Deed of Trust are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) The Borrower Not a Joint Venturer or Partner. The Borrower and the Agent acknowledge and agree that in no event shall the Agent be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Agent shall

not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.

(d) Replacement of the Note. Upon notice to the Borrower of the loss, theft, destruction or mutilation of the Note, the Borrower will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

(e) Waiver of Consequential Damages. The Borrower covenants and agrees that in no event shall Agent or the Banks be liable for consequential damages, whatever the nature of a failure by Agent or the Banks to perform its obligation(s), if any, under the Loan Documents, and the Borrower hereby expressly waives all claims that it now or may hereafter have against Agent and the Banks for such consequential damages.

(f) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

(g) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then the Agent may, at its option declare the Debt immediately due and payable.

(h) Interpretation of Agreement. Should any provision of this Deed of Trust require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Deed of Trust, including, without limitation, all Exhibits attached to this Deed of Trust.

(i) Joint and Several Obligations; Counterparts. If this Deed of Trust is executed by more than one Borrower, (i) the obligations and liabilities of Borrower under this Deed of Trust shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns, and (ii) this Deed of Trust may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Deed of Trust.

(j) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all Persons now or at any time hereafter liable therefor, or interested in the

Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such Persons being expressly reserved by the Agent, notwithstanding any such extension, variation or release.

(k) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Agent a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Agent pursuant to this Deed of Trust.

(l) No Merger. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Agent acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Agent as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(m) Complete Agreement. This Deed of Trust, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Agent.

33. JURISDICTION AND VENUE. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS DEED OF TRUST SHALL BE LITIGATED IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI OR, IF AGENT INITIATES SUCH ACTION, IN THE JURISDICTION IN WHICH THE MORTGAGED PROPERTY IS LOCATED. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS DEED OF TRUST. BORROWER WAIVES ANY CLAIM THAT ST. LOUIS COUNTY, MISSOURI, OR THE EASTERN DISTRICT OF MISSOURI IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT

OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

34. Waiver of Jury Trial. BORROWER AND AGENT HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO AGENT TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

35. Additional Waivers. BORROWER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY AGENT ON THIS DEED OF TRUST, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY AGENT.

36. Compliance with Loan Agreement. Borrower will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

37. Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Agent in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Deed of Trust and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Deed of Trust; provided, however, that the total Debt shall not in any event exceed two hundred percent of the stated principal amount of the Note.

38. Construction Loan. The Note evidences a debt created by one or more disbursements made by the Banks to Borrower to finance the cost of the construction of certain improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Deed of Trust is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

39. Trustee Provisions. The Trustee may resign at any time by written instrument to that effect delivered to Agent. Agent shall be entitled to remove (with or without cause), at any

time and from time to time, including any time before, during or after the commencement or completion of any foreclosure proceeding, the Trustee. In case of the death, removal, resignation, refusal to act or otherwise being unable to act of the Trustee, Agent shall be entitled to select and appoint a successor Trustee hereunder by an instrument duly executed, acknowledged and recorded in the manner and form for conveyances of real estate in the State of Utah, which recording may occur before, during or after the commencement or completion of any foreclosure proceeding, and any such successor Trustee shall thereupon succeed to Trustee as Trustee hereunder and to all of the rights, powers, duties, obligations and estate of said Trustee as if specifically named herein, provided no defect or irregularity in the resignation or removal of said Trustee or in the appointment of a successor Trustee or in the execution and recording of such instrument shall affect the validity of said resignation, removal or appointment or any act or thing done by such successor Trustee pursuant thereto. Additionally, whether the recording of the successor Trustee instrument takes place before, during or after the commencement or completion of any foreclosure proceeding shall have no effect upon the validity of said proceeding. Trustee shall not be disqualified from acting as Trustee hereunder or from performing any of the duties of Trustee, or from exercising the rights, powers and remedies herein granted, by reason of the fact that Trustee is an officer, employee or stockholder of Agent, or is interested, directly or indirectly, as the holder of the Note or other Indebtedness secured hereby, Borrower hereby expressly consenting to Trustee acting as Trustee irrespective of the fact that Trustee might be otherwise disqualified for any of the foregoing reasons, and that any interest which Trustee or any successor shall have or may acquire in the Indebtedness secured hereby, or the Mortgaged Property, shall neither interfere with nor prevent his acting as Trustee or from purchasing said property at said sale or sales, and all parties waive any objection to Trustee having or acquiring any such interest in the Indebtedness or Mortgaged Property and continuing to act as Trustee. Trustee covenants faithfully to perform and fulfill the trust herein created, but shall be liable, however, only for gross negligence or willful misconduct as determined by a court of competent jurisdiction.

40. State Specific Provisions.

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 35 and the terms and conditions of this Deed of Trust, the terms and conditions of this Section 35 shall control and be binding.

(b) Non-Residential Status of Property. For purposes of *Utah Code Annotated* Sections 57-1-25 and 78B-6-901.5, Borrower acknowledges that the purpose for which this Deed of Trust is given is not to construct residential or residential rental property.

(c) Trustee's Sale. Agent may execute a written notice of an Event of Default and of the election to cause the Mortgaged Property to be sold to satisfy the obligations secured hereby, and Trustee shall give and record such notice as then required by *Utah Code Annotated* § 57-1-25 or other applicable law as a condition precedent to a trustee's sale. When the minimum period of time then required by *Utah Code Annotated* § 57-1-24 or other applicable law after such notice has elapsed, Trustee, without notice to or demand upon Borrower except as otherwise may then be required by law, shall sell the Mortgaged Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels or through one or more successive sales and in such order

as it or Agent may determine, at public auction to the highest bidder for cash, in lawful money of the United States, or other form of payment acceptable to Agent, payable at the time of sale. Subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27, Agent may, in its sole discretion, designate the order in which the Mortgaged Property is offered for sale or sold and determine if the Mortgaged Property shall be sold through a single sale or through two or more successive sales, or in any other manner Agent deems to be in its best interest. If Agent elects more than one sale or other disposition of the Mortgaged Property, Agent may at its option cause the same to be conducted simultaneously or in such order and at such times as Agent may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Mortgaged Property not then sold until all indebtedness secured hereby has been fully paid. If Agent elects to dispose of the Mortgaged Property through more than one sale, Borrower shall pay the costs and expenses of each such sale and of any judicial proceedings where the same may be undertaken. Subject to *Utah Code Annotated* § 57-1-27, Trustee may postpone any such sale by public announcement at the time and place fixed by the notice of sale, and may thereafter continue such postponement by like announcements at the time and place fixed by the preceding postponement, at Agent's direction and without necessity of additional notices of sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of time, date and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-25. Trustee shall execute and deliver to the purchaser at such sale a trustee's deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Mortgaged Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in such Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Agent, may bid at the sale, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b), or other applicable law. In the event of a successful credit bid, Agent shall make settlement for the purchase price by crediting upon the obligations of Borrower secured by this Deed of Trust such credit bid amount. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Agent may elect in its sole and absolute discretion, unless otherwise required by *Utah Code Annotated* § 57-1-29 or other applicable law. Agent, upon so acquiring the Mortgaged Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. Borrower waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Mortgaged Property, (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the obligation secured hereby in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce any obligation secured hereby, and (e) any rights, legal or equitable, to require marshalling of assets or to require foreclosure sales in a particular order, subject

to *Utah Code Annotated* § 57-1-27. 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 herein. Agent shall have the right to determine the order in which any of all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel, including fees for accountings and reinstatement quotes as may be required by *Utah Code Annotated* §57-1-31.5, in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

(d) Changes Do Not Affect Liability. Borrower agrees that Banks or Agent may without notice to Borrower and, without limiting Borrower's liability under, or affecting the enforceability of, this Deed of Trust:

(i) grant extensions of time, renewals or other indulgences and modifications to Borrower;

(ii) change the rate of interest under the Loan Agreement or the Notes;

(iii) otherwise change, amend or modify the Loan Agreement or the Notes or any documents relating to the Debt;

(iv) authorize the sale, exchange, release or subordination of any security or collateral in which Banks or Agent has an interest or fail to create, perfect or maintain the priority of any security interest in any such collateral;

(v) take additional security for any obligation in connection with the Loan Agreement;

(vi) discharge or release any party or parties liable under the Loan Documents;

(vii) accept or make compositions or other arrangements or file or refrain from filing a claim in any bankruptcy proceeding of any of Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Agent or any other person related to the Loan Agreement;

(viii) make other or additional loans to Borrower in such amounts and at such times as Agent may determine;

(ix) credit payments in such manner and order of priority to principal, interest or other obligations as Agent may determine; and

(x) otherwise deal with Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Agent or any other person related to the Loan Agreement as Agent may determine in its sole discretion.

(e) Obligations Absolute. Borrower agrees that its liability under, and the enforceability of, this Deed of Trust are absolute and are not contingent upon the genuineness, validity or enforceability of any of the other Loan Documents or the availability of any defense to Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Agent or any other person related to the Loan Agreement. Borrower agrees that Borrower shall be liable even if Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Agent or any other person related to the Loan Agreement had no liability at the time of execution of the Loan Agreement or later ceases to be liable.

(f) Waivers. Borrower agrees that Borrower's liability may be larger in amount and more burdensome than that of Borrower. Borrower's liability shall continue until all sums due under the Loan Documents have been paid in full and shall not be limited or affected in any way by any impairment or any diminution or loss of value of any security or collateral for the Loan Agreement, from whatever cause, including, without limitation, Agent's failure to perfect a security interest in any such security or collateral or any disability or other defense of Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Agent or any other person related to the Loan Agreement.

(g) Suretyship Waivers. To the full extent permitted by applicable law, Borrower waives all benefits and defenses it may have to require Agent to (i) proceed against Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Banks or Agent or any other person related to the Loan Agreement, (ii) proceed against or exhaust any other security or collateral Banks or Agent may hold, or (iii) pursue any other right or remedy for Borrower's benefit, and agrees that Banks or Agent may foreclose against any property or any other security Banks or Agent may hold without taking any action against Borrower, any Guarantor, any pledgor of collateral for any person's obligations to Banks or Agent or any other person related to the Loan Agreement, and without proceeding against or exhausting any security or collateral Banks or Agent may hold.

(h) Waiver. To the full extent permitted by applicable law, Borrower waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, *Utah Code Annotated* § 78B-6-901 (formerly codified at *Utah Code Annotated* § 78-37-1).

(i) Alteration of Obligations. Borrower agrees that Borrower's liability and the enforceability of this Deed of Trust shall continue even if Agent alters any obligations under the Loan Agreement or any of the other Loan Documents in any respect.

(j) Additional Waivers. Borrower waives diligence and all demands, protests, presentments and notices of every kind or nature, including notices of protest, dishonor, nonpayment, acceptance of this Deed of Trust and creation, renewal, extension, modification or accrual of any of the obligations under the Loan Agreement or the other

Loan Documents. Borrower also waives the right to plead all statutes of limitation as a defense to Borrower's liability under, or the enforceability of, this Deed of Trust.

(k) Election of Remedies. Borrower waives all rights and defenses arising out of an election of remedies by Agent, even though that election of remedies, such as a nonjudicial foreclosure of any real property security for the Loan Agreement, may destroy Borrower's rights of subrogation and reimbursement against Borrower.

(l) Borrower Informed of Borrower's Condition. Borrower acknowledges that it has had an opportunity to review the Loan Documents, the value of the security for the Debt and Borrower's financial condition and ability to repay the Debt. Borrower agrees to keep fully informed of all aspects of Borrower's financial condition and the performance of Borrower's obligations to Banks or Agent and that Banks or Agent has no duty to disclose to Borrower any information pertaining to Borrower or any security for the Debt.

(m) Subrogation, Reimbursement and Contribution Rights. Borrower agrees that its rights of subrogation and reimbursement against Borrower, its right of subrogation against any other collateral or security for the Debt or the pledgor of such collateral or security and its right of contribution from any Guarantor shall be subordinate to Banks' or Agent's rights against Borrower, in such collateral or security, against any such pledgor and against any such Guarantor. Borrower shall have no such rights of subrogation, reimbursement or contribution until all amounts due under the Loan Documents have been paid in full and Agent has released, transferred or disposed of all of its rights in any collateral or security. Borrower waives any right it may have to require marshalling of assets.

(n) Confirmation of Waivers. Borrower understands and acknowledges that if Banks or Agent forecloses judicially or nonjudicially against any real property security for the Debt, that foreclosure could impair or destroy any ability that Borrower may have to seek reimbursement, contribution or indemnification from Borrower or others based on any right Borrower may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Borrower under the Guaranty or this Deed of Trust. By executing this Deed of Trust, Borrower freely, irrevocably and unconditionally: (a) agrees that Borrower will be fully liable under the Guaranty, even though Agent may foreclose judicially or nonjudicially against any real property security for the Debt; (b) agrees that Borrower will not assert that defense in any action or proceeding that Agent may commence to enforce this Deed of Trust; and (c) acknowledges and agrees that Banks or Agent is relying on this waiver in extending credit under the Loan Agreement and for the Debt and accepting the Guaranty and this Deed of Trust, and that this waiver is a material part of the consideration that Banks or Agent is receiving for extending credit under the Loan Agreement and the Debt and accepting the Guaranty and this Deed of Trust.

(o) TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, BORROWER WAIVES ALL RIGHTS AND DEFENSES THAT BORROWER MAY HAVE BECAUSE BORROWER'S DEBT IS, OR BECAUSE BORROWER'S

OBLIGATIONS UNDER THE LOAN DOCUMENTS MAY BE, SECURED BY REAL PROPERTY. THIS MEANS, AMONG OTHER THINGS THAT IF BANKS OR AGENT FORECLOSE ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER, ANY GUARANTOR OR ANY OTHER PERSON THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT THE FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE SUBJECT TO *UTAH CODE ANNOTATED* §57-1-32. THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES BORROWER HAS BECAUSE BORROWER'S DEBT IS, OR BECAUSE BORROWER'S OBLIGATIONS UNDER THE LOAN DOCUMENTS MAY BE, SECURED BY REAL PROPERTY.

(p) Pursuant to *Utah Code Annotated* §57-1-26 Borrower requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Borrower at the address for Borrower specified in the Loan Agreement.

(q) For purposes of *Utah Code Annotated* § 57-1-28, Borrower agrees that all unpaid late charges, liquidated damages described in the Loan Agreement, swap or interest rate hedge breakage fees and other fees, administrative processing and/or commitment fees, and all other expenses and costs set forth in the Loan Documents, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Agent's Deed of Trust lien upon the Mortgaged Property, and (ii) Borrower may add all unpaid late charges, liquidated damages described in the Loan Agreement, swap or interest rate hedge breakage fees and other fees, administrative processing and/or commitment fees, and all other expenses and costs set forth in the Loan Documents owing from time to time to the principal balance of the Note in its sole discretion, and in either case Agent may include all such amounts in any credit which Agent may make against its bid at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust.

(r) In the event of a sale of all or any part of the Mortgaged Property as the result of the exercise by Agent of remedies for an Event of Default, pursuant to the powers and rights granted Agent under this Deed of Trust, or otherwise a foreclosure sale, Agent is hereby authorized, without the consent of Borrower, to assign, or cause to be assigned, any and all insurance policies to the purchaser at such sale or to take such other steps as Agent may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(s) Water Rights.

(i) Borrower shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing,

which now or hereafter has jurisdiction over Borrower or all or any portion of the real property subject to this Deed of Trust.

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

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

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

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

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

proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

(t) If Borrower, Borrower's successor in interest or any other person having a subordinate lien or encumbrance of record on the Mortgaged Property, reinstates this Deed of Trust within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Agent the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined by Agent, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

(u) Agent, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Agent and duly acknowledged and recorded in the office of the recorder of the county or counties where the Mortgaged Property is situated, with a copy thereof being provided to the persons required by *Utah Code Annotated* § 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Borrower, Trustee and Agent hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee and all other information required by *Utah Code Annotated* § 57-1-22 or any successor statute. In compliance with *Utah Code Annotated* § 57-1-21.5, the Trustee shall not require the trustor reinstating or paying of the loan or Agent acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

(v) In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of the *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Agent, be deemed amended to be consistent with such amendments or Agent may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(w) PURSUANT TO *UTAH CODE ANNOTATED* SECTION 25-5-4, THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

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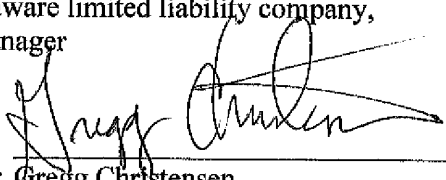
IN WITNESS WHEREOF, the Borrower has caused this Deed of Trust to be duly executed and delivered as of the day and year first above written.

BORROWER:

VILLAS AT MILLCREEK, LLC,
a Delaware limited liability company

By: Cottonwood Richmond at Millcreek QOF, LLC,
a Delaware limited liability company,
its Manager

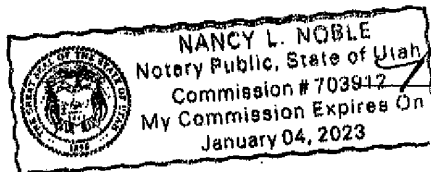
By: High Traverse Development, LLC,
a Delaware limited liability company,
its Manager


By: 
Name: Gregg Christensen
Title: Chief Legal Officer

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that GREGG CHRISTENSEN, the Chief Legal Officer of High Traverse Development, LLC, a Delaware limited liability company, the Manager of Cottonwood Richmond at Millcreek QOF, LLC, a Delaware limited liability company, the Manager of Villas at Millcreek, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of MARCH, 2020.




Notary Public

My Commission Expires:

1-4-2023

EXHIBIT "A"

LEGAL DESCRIPTION

A part of the Southeast Quarter of Section 29, Township 1 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point on the South Line of Gunn Avenue as widened to 39.00 foot half-width located 31.00 feet South $0^{\circ}10'25''$ West (South record); and 104.00 feet North $89^{\circ}49'35''$ West (West record) from the East Quarter Corner of said Section 29; and running thence South $0^{\circ}10'25''$ West (South record) 131.12 feet; thence South $88^{\circ}40'25''$ West (South $88^{\circ}30'$ West record) 158.53 feet; thence South $0^{\circ}10'25''$ West (South record) 87.22 feet; thence South $88^{\circ}40'25''$ West (South $88^{\circ}30'$ West record) 302.52 feet; thence North $0^{\circ}10'25''$ East (North record) 17.44 feet; thence South $88^{\circ}40'25''$ West (South $88^{\circ}30'$ West record) 5.37 feet (4.40 feet record) to the East Line of Richmond Street as it exists at 40.00 foot half-width; thence Northwesterly along the arc of an 1106.28 foot radius curve to the right a distance of 215.09 feet (Center bears North $77^{\circ}30'53''$ East, Central Angle equals $11^{\circ}08'23''$ and Long Chord bears North $6^{\circ}54'55''$ West 214.75 feet) to the South Line of Gunn Avenue as widened; thence South $89^{\circ}49'35''$ East 492.77 feet along said South Line to the point of beginning.