

**THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:**  
Mid-America Apartments, L.P.  
6815 Poplar Avenue, Suite 500  
Germantown, TN 38138  
Attn: Chad Wilgenbusch

13641650  
4/23/2021 2:47:00 PM \$40.00  
Book - 11162 Pg - 8044-8070  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
OLD REPUBLIC TITLE DRAPER/OREM  
BY: eCASH, DEPUTY - EF 27 P.

APN(s): 26-13-301-003  
File 2042756HM

CC Daybreak, LLC, as trustor  
(Trustor)

to

Hillary Morgan, an individual, as trustee  
(Trustee)

for the benefit of

PAH Lender, LLC, as beneficiary  
(Beneficiary)

---

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

---

Dated: As of April 23, 2021  
Address: 5502 S. Jordan Parkway  
South Jordan, Utah  
County: Salt Lake County

**THIS INSTRUMENT SECURES FUTURE, OBLIGATORY ADVANCES.**

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

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") is made as of the 23rd day of April, 2021, by CC Daybreak, LLC, a Delaware limited liability company (herein referred to as "Trustor"), whose address is c/o Crescent Communities, 227 West Trade Street, Suite 1000, Charlotte, North Carolina 28202, Attn: Jason LaBonte, to Old Republic National Title Insurance Company, Attn: Hillary Morgan, an individual, as Trustee ("Trustee"), whose address is 898 North 1200 West, Suite 101, Orem, Utah 84057 and PAH Lender, LLC, a Georgia limited liability company, as beneficiary ("Beneficiary"), whose address is 6815 Poplar Avenue, Suite 500, Germantown, Tennessee 38138, Attn: Robert J. DelPriore.

Preliminary Statements

Trustor and Beneficiary have entered into a Construction Loan Agreement of even date herewith (the "Loan Agreement"), pursuant to which Beneficiary has agreed to loan to Trustor up to Fifty-Nine Million Nine Hundred Fourteen Thousand Nine Hundred Sixty-One and no/100 Dollars (\$59,914,961.00) (the "Loan"). As a condition precedent to making the Loan, Beneficiary has required that Trustor execute and deliver this Deed of Trust to Trustee for the benefit of Beneficiary.

Agreements

Now, therefore, in consideration of the agreements set forth in the Loan Agreement and the other Loan Documents and in order to induce Beneficiary to make the Loan to Trustor, Trustor agrees as follows:

Article I  
Definitions.

As used in this Deed of Trust, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. In addition, the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in the Land or Improvements, or used in or necessary to the complete and proper construction or operation thereof, or acquired for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Trustor within the meaning of the UCC, arising out of the use, occupancy or enjoyment of the Property.

---

“Additions” means any and all alterations, additions, accessions and improvements to property, and renewals and replacements thereof.

“Beneficiary” means the beneficiary identified in the first paragraph set forth above, and its successors and assigns.

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including reasonable and actual fees, costs and expenses of attorneys (without regard to any statutory attorneys’ fees), consultants, contractors and experts, but excluding special, exemplary, consequential or punitive damages, provided any such damages shall be deemed direct damages to the extent awarded by a court of competent jurisdiction to an unaffiliated third party in a final, non-appealable judgment.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Construction Documents” means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

“Deed of Trust” means this Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Encumbrance” means any Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any condition, covenant or restriction imposed in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“Expenses” means all out-of-pocket fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time by Beneficiary or Trustee in connection

---

with the Loan, including without limitation, in exercising or enforcing any rights, powers and remedies provided in this Deed of Trust or any of the other Loan Documents, including reasonable and actual attorneys' fees (without regard to any statutory attorneys' fees).

"Indemnity Agreement" means the Environmental Indemnity Agreement of even date herewith by and among Trustor, Guarantor and Beneficiary pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified.

"Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit A attached hereto and made a part hereof.

"Leases" means all leases and other similar agreements, whether now existing or hereafter entered into, for space at the Property, including all lease guaranties related thereto, as the same may be amended or modified from time to time.

"Letter of Credit" means any letter of credit issued by Beneficiary for the account of Trustor in connection with the development of the Project together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

"Lien" means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the UCC of any jurisdiction.

"Net Proceeds" when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys' fees, incurred in the collection of such gross proceeds.

"Notice" means a notice, request, consent, demand or other communication given in accordance with the provisions of the Loan Agreement.

"Permitted Encumbrances" means (a) any matters set forth in any policy of title insurance issued to Beneficiary and insuring Beneficiary's interest in the Property which are acceptable to Beneficiary as of the date hereof, (b) the Liens and interests of this Deed of Trust, (c) grants of standard utility and/or access easements, licenses and other similar conveyances or Encumbrances reasonably required in connection with the development and/or ordinary course operation or development of the Project in accordance with the plans and specifications for the Project approved or deemed approved by Beneficiary in accordance with the Loan Agreement and which, individually or in the aggregate, do not have a material adverse effect on the value or utility of the Project, (d) Leases entered into in accordance with the terms of the Loan Documents, and (e) any other Encumbrance that Beneficiary shall expressly approve in its reasonable discretion.

“Personalty” means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Trustor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Deed of Trust, and Beneficiary shall have no responsibility for the performance of Trustor’s obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Trustor’s rights and interests under all Interest Rate Swap, including all rights to the payment of money from Beneficiary under any Interest Rate Swap and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Interest Rate Swap; (f) all insurance policies held by Trustor with respect to the Property or Trustor’s operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Trustor, whether with Beneficiary and/or related to the Property or otherwise, including any such deposit account from which Trustor may from time to time authorize Beneficiary to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

“Proceeds” when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the UCC.

“Property” means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Trustor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Trustor’s right, title and interest in and to all Construction Documents.

“Property Assessments” means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner’s association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

“Real Property” means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments,

---

appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Trustor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Trustor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Trustor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

“Rents” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

“Taxes” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Trustor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“Transfer” means any direct or indirect sale, assignment, conveyance or transfer, whether made voluntarily or by operation of law or otherwise, and whether made with or without consideration.

“Trustee” means the initial Trustee named in this Deed of Trust or its successor in trust who may be acting under and pursuant to this Deed of Trust from time to time.

“UCC” means the Uniform Commercial Code, as enacted or adopted by the state or states in which any of the Property is located.

## Article II

### Granting Clauses; Condition of Grant.

#### Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Trustor (a) grants, bargains, sells, conveys, and warrants, in trust for the benefit of Beneficiary, with power of sale, the Real Property unto Trustee in fee simple forever; provided that Trustor may retain possession of the Real Property until the occurrence of a Default (unless and until such Default is cured by Trustor or waived in writing by Beneficiary); (b) grants to Beneficiary a security interest in the Personalty; (c) assigns to Beneficiary, and grants to Beneficiary a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) to the extent assignable, assigns to Beneficiary, and grants to Beneficiary a security interest in, all of Trustor’s right, title and interest in, but not any of Trustor’s obligations or liabilities under, all Construction Documents.

---

TO HAVE AND TO HOLD, the foregoing rights, interests, and properties, and all rights, estates, powers and privileges appurtenant thereto, unto the Trustee and Trustee's successors or substitutes in this Trust, and to Trustee's successors and assigns, in trust, in fee simple forever, subject to the terms and provisions set forth herein.

All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations.

Section 2.2    Assignment of Leases and Rents.

In consideration of the making of the Loan by Beneficiary to Trustor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor absolutely and unconditionally assigns, conveys, and warrants the Leases and Rents to Beneficiary. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Trustor to Beneficiary of all of Trustor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Default shall exist, however, Trustor shall have a license (which license shall terminate automatically and without notice upon the occurrence, and during the continuance, of a Default) to collect, but not more than one (1) month prior to accrual, all Rents. Trustor agrees to collect and hold all Rents in trust for Beneficiary and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3    Security Agreement, Fixture Filing and Financing Statement.

This Deed of Trust creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Deed of Trust constitutes a security agreement from Trustor to Beneficiary under the UCC. In addition to all of its other rights under this Deed of Trust and otherwise, Beneficiary shall have all of the rights of a secured party under the UCC, as in effect from time to time, or under the UCC in force from time to time in any other state to the extent the same is applicable law. Upon recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Deed of Trust shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Trustor (as debtor) and Beneficiary (as secured party) are set forth in the opening paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or any other financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section. Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, reasonably required by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust.

---

Section 2.4    Release of Deed of Trust and Termination of Assignments and Financing Statements.

If and when Trustor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, Trustee will provide a release of the Property from the lien of this Deed of Trust and termination statements for filed financing statements, if any, to Trustor. Trustor shall be responsible for the recordation of such release and the payment of any recording and filing costs. Upon the recording of such release and the filing of such termination statements, this Deed of Trust, including the absolute assignments set forth in Section 2.2, shall automatically terminate and become null and void.

Article III  
Representations and Warranties.

Trustor makes the following representations and warranties to Beneficiary as of the date of this Agreement:

Section 3.1    Title to Real Property.

Trustor (a) owns fee simple title to the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Trustor has the right and authority to convey the Real Property. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2    Title to Other Property.

Trustor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, or Construction Documents are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3    Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4    Independence of the Real Property.

The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5    Leases and Tenants.

To the extent any Leases have been executed, such Leases are valid and are in full force and effect, and Trustor is not in material default under any of the terms thereof.



---

Article IV  
Affirmative Covenants.

Section 4.1    Obligations.

Trustor agrees to pay and perform all of the Obligations prior to delinquency, time being of the essence in each case.

Section 4.2    Property Assessments; Documentary Taxes.

Trustor (a) will pay in full and discharge prior to delinquency all Property Assessments, and (b) will furnish to Beneficiary, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent.

Section 4.3    Permitted Contests.

So long as no Default exists, Trustor may, in good faith, and at its cost and expense, contest the amount or validity of any Property Assessments, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to stay the collection of the Property Assessments or enforcement of any Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) neither Beneficiary nor Trustee is subjected to any Claim as a result of such contest, and (d) unless such Property Assessments are to be paid by a tenant at the Property, Trustor provides assurances and/or security reasonably satisfactory to Beneficiary (which may include the establishment of an appropriate reserve account with Beneficiary, provided that any such sum required by Beneficiary shall not be duplicative of any sums required by a court or Governmental Authority to be placed on deposit with such court or Governmental Authority in conjunction with such contest) of its ability to pay such Property Assessments or comply with such Law in the event Trustor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Trustor shall indemnify and save Beneficiary and Trustee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Trustor (or a tenant at the Property) shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines and interest, and all out-of-pocket costs and expenses in connection therewith.

Section 4.4    Compliance with Laws.

Trustor will comply in all material respects with and not violate, and cause to be complied with and not violated, all present and future laws applicable to the Property and its use and operation.

Section 4.5    Maintenance and Repair of the Property.

Trustor, at Trustor's sole expense, will (a) keep and maintain the Improvements and Accessories in good condition, working order and repair, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the

Improvements and all of the Accessories shall at all times be in good condition for the respective purposes for which they were originally intended.

Section 4.6    Additions to Security.

All right, title and interest of Trustor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further deed of trust, conveyance, assignment or other act by Trustor, become subject to the Lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Trustor and specifically described in the granting clauses hereof. Trustor agrees, however, to execute and deliver to Trustee and/or Beneficiary such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

Section 4.7    Subrogation.

To the extent permitted by law, Beneficiary shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Beneficiary whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Beneficiary to pay or discharge any Lien.

Section 4.8    Insurance.

Trustor shall maintain, at its sole cost and expense, insurance, as required by Beneficiary's insurance requirements provided in writing, to include, without limitation:

(a)    "All Risk" insurance against casualty to the Property, including, but not limited to, fire, lightning, windstorm, hail, explosion, and riot. Such insurance shall name Beneficiary as mortgagee and loss payee in accordance with Beneficiary's insurance requirements. Unless otherwise agreed in writing by Beneficiary, such insurance shall be for the full insurable value of the Property, and in a form otherwise reasonably satisfactory to Beneficiary.

(b)    Commercial general liability insurance on an "occurrence" basis against claims for bodily injury and damage to property, in accordance with Beneficiary's insurance requirements. Such insurance shall name Beneficiary as an additional insured.

(c)    Workers' compensation insurance for all employees of Trustor as required by law.

(d)    During any period of construction upon the Property, Trustor shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Property.

(e)    If at any time any portion of any structure on the Property is insurable against casualty by flood and is located in a Special Flood Hazard Area, as determined by

Beneficiary, a flood insurance policy in form and amount acceptable to Beneficiary, as required by applicable law.

(f) Loss of rental value insurance or business interruption insurance as reasonably required by Beneficiary.

(g) Such other and further insurance as may be reasonably required from time to time by Beneficiary.

In addition to the foregoing, Trustor shall cause the Contractor to provide and maintain insurance as required by Beneficiary's insurance requirements provided in writing, to include comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the Contractor.

Trustor acknowledges receiving Beneficiary's insurance requirements. Each policy of insurance maintained by Trustor shall meet Beneficiary's insurance requirements and be otherwise reasonably acceptable to Beneficiary.

As of the date hereof, by acceptance of this Deed of Trust, Beneficiary acknowledges and agrees that the insurance requirements set forth in Schedule 4.2(d) of Trustor's limited liability company agreement in place as of the date hereof satisfy the obligations of Beneficiary's insurance requirements under Section 4.8(a) through (f) above so long as such insurance policies name Beneficiary as mortgagee and loss payee or additional insured, as applicable, and subject to Beneficiary's right to require changes thereto from time to time in accordance with this Section 4.8.

#### Section 4.9 Adjustment of Condemnation and Insurance Claims.

Trustor shall give prompt Notice to Beneficiary of any Casualty or any Condemnation or threatened Condemnation. Beneficiary is authorized, at its option, to commence, appear in and prosecute, in its own or Trustor's name, any proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any claim in connection therewith, or to permit Trustor to do so. In such case, Beneficiary shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any or all of its Costs. If any Condemnation Awards or Insurance Proceeds are paid to Trustor, Trustor shall receive the same in trust for Beneficiary. Within ten (10) days after Trustor's receipt of any Condemnation Awards or Insurance Proceeds, Trustor shall deliver such awards or proceeds to Beneficiary in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Beneficiary. Trustor agrees to execute and deliver from time to time, upon the request of Beneficiary, such further instruments or documents as may be reasonably requested by Beneficiary to confirm the grant and assignment to Beneficiary of any Condemnation Awards or Insurance Proceeds.

If no Default exists, Beneficiary may permit Net Proceeds for the restoration of the Property if, in the reasonable judgment of Beneficiary, (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Beneficiary for that purpose, are

---

sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Beneficiary, and (iii) the restoration can be completed prior to the final maturity of the Loan. Otherwise, Net Proceeds shall be utilized for payment of the Obligations. If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Beneficiary for that purpose, shall be deposited in an interest-bearing account assigned to Beneficiary as additional security for the Loan. The account will be opened, managed and controlled in a manner consistent with, and subject to, the provisions of the Loan Agreement. Disbursements of funds from the account will be made in a manner consistent with the requirements under the Loan Agreement for the disbursement of Loan proceeds.

#### Section 4.10 Deposits.

During the existence of a Default, Trustor shall, upon demand by Beneficiary, pay to Beneficiary monthly, on the same date payments are due under the Note, a sum (herein "Funds") equal to one-twelfth of the yearly Property Assessments which may attain priority over this Deed of Trust, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Beneficiary in an interest-bearing account, and Beneficiary shall apply the Funds to pay said Property Assessments, as and when they shall be due and payable. The Funds are pledged as additional security for the Obligations secured by this Deed of Trust. If the amount of the Funds held by Beneficiary shall not be sufficient to pay Property Assessments, when due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within fifteen (15) days from the date Notice is delivered by Beneficiary to Trustor requesting payment thereof. Upon payment in full of all Obligations, all Funds then held by Beneficiary shall be returned to Trustor.

### Article V Negative Covenants.

#### Section 5.1 Encumbrances.

Trustor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Trustor will promptly discharge the same by payment or filing a bond or otherwise as permitted by law. So long as Beneficiary's security has been protected by the filing of a bond or otherwise in a manner reasonably satisfactory to Beneficiary in its sole and absolute discretion, and no Default exists, Trustor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Trustor does so diligently and without prejudice to Beneficiary or delay in completing construction of the Improvements. Trustor shall give Beneficiary Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

---

#### Section 5.2    Transfer of the Property.

Trustor will not Transfer all or any part of the Property or any legal or beneficial interest therein (except for Permitted Transfers and certain Transfers of the Accessories expressly permitted in this Deed of Trust). Except for Permitted Transfers, and Transfers otherwise consented to by Beneficiary, the Transfer of any ownership interest in Trustor (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property.

#### Section 5.3    Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, or as may be otherwise provided in the Loan Agreement, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Beneficiary. Trustor may remove and dispose of, free from the Lien of this Deed of Trust, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Trustor shall be deemed to have subjected such Accessories to the Lien of this Deed of Trust), or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Beneficiary to be applied to the prepayment of the principal of the Loan.

#### Section 5.4    Additional Improvements.

Trustor will not construct any Improvements other than those presently on the Land and those described in the Loan Agreement without the prior written consent of Beneficiary. Trustor will complete and pay for, prior to delinquency, any Improvements which Trustor is permitted to construct on the Land. Trustor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

#### Section 5.5    Restrictive Covenants, Zoning, etc.

Without the prior written consent of Beneficiary, other than Permitted Encumbrances, Trustor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property. Trustor (a) will promptly perform and observe, and cause to be performed and observed, in all material respects all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

---

Article VI  
Events of Default.

The occurrence or happening, from time to time, of a Default under the Loan Agreement shall constitute a Default under this Deed of Trust.

Article VII  
Rights and Remedies.

During a continuing Default, Beneficiary, or Trustee at the direction of Beneficiary, shall have the right, in addition to any other rights or remedies available to Beneficiary under any of the Loan Documents or applicable law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1    Acceleration.

Beneficiary may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Trustor).

Section 7.2    Foreclosure: Power of Sale.

a. Beneficiary may (or, at Beneficiary's election, acting by or through Trustee) immediately commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the debt secured hereby, pursuant to the statutes in such case made and provided, and cause Trustee to execute and record a notice of default in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Annotated Code* § 57-1-24 or other applicable law. Following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and *Utah Code Annotated* § 57-1-26 or other applicable law, Trustee, without demand on Beneficiary, may sell the Property or cause the Property to be sold in a single parcel or in several parcels at the option of Beneficiary in its sole and absolute discretion or as otherwise provided in the notice of sale or directed by the Beneficiary pursuant to *Utah Code Annotated* § 57-1-28(1)(a). Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or on such different days or at such different times and in such order as Beneficiary may designate in its sole and absolute discretion, and no such sale or disposition shall terminate or otherwise affect the liens and security interests of this Deed of Trust on any part of the Property not sold or disposed of until all of the Bond Notes has been paid in full and Trustor's other obligations under the Loan Documents have been fully performed and discharged, provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. In the event foreclosure proceedings are instituted or filed by

Beneficiary, all expenses incident to such proceedings, including, but not limited to, court costs and attorneys' fees and expenses, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the Bond Documents evidenced by the Note. The secured Bond Documents and all other obligations secured by this Deed of Trust, including, without limitation, interest at the default rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and expenses and any other amounts due and unpaid to Beneficiary under the Loan Documents, may be bid by Beneficiary in the event of a foreclosure sale hereunder. Without limiting the foregoing or any other rights or remedies available to Beneficiary, Beneficiary may also commence and prosecute a judicial foreclosure action under applicable law.

b) If the Property consists of multiple parcels, then in any sale of the Property pursuant to Beneficiary's exercise of its remedies after an Event of Default (including any judicial foreclosure sale and any non-judicial sale under applicable law), the multiple parcels may be sold in a single sale or, at the option of the Beneficiary (or, at Beneficiary's election, acting by or through Trustee) in its sole and absolute discretion, a sale of any one or more of such parcels separately. Any such separate sales may be made in whatever order Beneficiary determines in its sole and absolute discretion. Beneficiary (or, at Beneficiary's election, acting by or through Trustee) may, in its sole and absolute discretion, cause the entire Property to be offered for sale as a single auction lot and may also cause bids to be solicited for individual parcels of the Property as separate auction lots in any order, but shall be under no obligation to proceed in either manner or the other. Trustor acknowledges that if Beneficiary (or, at Beneficiary's election, acting by or through Trustee) sells multiple parcels individually, no fair value or deficiency hearing shall be required after each sale.

#### Section 7.3 Judicial Action.

Beneficiary shall have the right from time to time to sue Trustor for any out-of-pocket sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other out-of-pocket sums required to be paid under the terms of this Deed of Trust, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor, including an action of foreclosure or an action for specific performance, for a Default or Default existing at the time such earlier action was commenced.

#### Section 7.4 Collection of Rents.

During a continuing Default, the license granted to Trustor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Trustor. Beneficiary may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Trustor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Trustor or any other Person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be

sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Trustor. Trustor hereby irrevocably authorizes and directs the tenants under the Lease to pay all Rents to Beneficiary instead of to Trustor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Trustor and without the necessity of determining the existence or non-existence of a Default. Trustor hereby appoints Beneficiary as Trustor's attorney-in-fact with full power of substitution, which appointment shall take effect during the continuance of a Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Trustor's name or in Beneficiary's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Trustor shall pay, on demand, to Beneficiary, the amount of any deficiency between (i) the Rents received by Beneficiary, and (ii) all Expenses incurred together with interest thereon as provided in the Loan Agreement and the other Loan Documents.

#### Section 7.5 Taking Possession or Control of the Property.

As a matter of right without regard to the adequacy of the security, and to the extent permitted by law without notice to Trustor, Beneficiary shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Trustor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to Beneficiary pursuant to Section 7.4. In addition, to the extent permitted by law, and with or without the appointment of a receiver, or an application therefor, Beneficiary may (a) enter upon, and take possession of (and Trustor shall surrender actual possession of), the Property or any part thereof, without notice to Trustor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Trustor and its agents and employees therefrom.

#### Section 7.6 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.5, Beneficiary, Trustee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Trustor (the costs of completing such Improvements shall be Expenses secured by this Deed of Trust and shall accrue interest as provided in the Loan Agreement and the other Loan Documents). Beneficiary, Trustee or such receiver shall



---

be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Default, and the enforcement of such remedies, once commenced, shall continue for so long as Beneficiary shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Default.

Section 7.7     Uniform Commercial Code.

Beneficiary may proceed under the UCC as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the UCC. Upon the occurrence of any Default, and so long as such Event of Default continues, Trustor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the UCC shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Deed of Trust at least ten (10) days, or as otherwise required by applicable law, before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties.

Section 7.8     Application of Proceeds.

Unless otherwise provided by applicable law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article VII and any other proceeds received by Beneficiary from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Beneficiary may elect.

Section 7.9     Other Remedies.

Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Trustor provided under the Loan Documents or by applicable laws.

Article VIII  
Trustee.

Section 8.1     Liability of Trustee.

Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Loan Documents or the description, value or status of title to the Property. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken

or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful conduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Beneficiary, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Property following a Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Beneficiary.

#### Section 8.2     Indemnification of Trustee.

Trustor agrees to indemnify Trustee and to hold Trustee harmless from and against any and all Claims and Expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including but not limited to any Claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Trustor or any other Person in connection with the ownership, development, financing, operation or sale of the Property; provided, however, that Trustor shall not be obligated to indemnify Trustee with respect to (i) any Claim arising solely from the gross negligence or willful misconduct of Trustee; or (ii) any Claim first arising after Trustor no longer has title to the Property. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed in lieu thereof and any other action by Trustee to enforce the rights and remedies of Beneficiary or Trustee hereunder or under the other Loan Documents.

#### Section 8.3     Substitution of Trustee; Multiple Trustees.

Beneficiary shall have, and is hereby granted with warranty of further assurances, the irrevocable power to appoint a new or replacement or substitute Trustee. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a Substitution of Trustee. The power of appointment of a successor Trustee may be exercised as often as and whenever Beneficiary may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Substitution of Trustee, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Property and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder. Whenever in this Deed of Trust reference is made to Trustee, it shall be construed to mean each Person appointed as Trustee for the time being, whether original or successor in trust. All title, estate, rights, powers, trusts and duties granted to Trustee shall be in each Person appointed as Trustee so that any action hereunder by any

---

Person appointed as Trustee shall for all purposes be deemed to be, and as effective as, the action of all Trustees.

Article IX  
Miscellaneous.

Section 9.1    Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Beneficiary or Trustee as provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by law, and the exercise or beginning of the exercise by Beneficiary or Trustee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Beneficiary or Trustee of any or all such other rights, powers or remedies.

Section 9.2    No Waiver by Beneficiary or Trustee.

No course of dealing or conduct by or among Beneficiary, Trustee and Trustor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents. No failure or delay by Beneficiary or Trustee to insist upon the strict performance of any term, covenant or agreement of this Deed of Trust or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Beneficiary or Trustee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, neither Beneficiary nor Trustee shall be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare a Default for failure to make prompt payment of any such other Obligations. Neither Trustor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Beneficiary to comply with any request of Trustor or of any other Person to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Beneficiary, or (c) Beneficiary's extending the time of payment or modifying the terms of this Deed of Trust or any of the other Loan Documents without first having obtained the consent of Trustor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Beneficiary may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Deed of Trust or any of the other Loan Documents without in any way impairing or affecting the Lien of this Deed of Trust or the priority of this Deed of Trust over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Deed of Trust. Beneficiary may resort to the security or collateral described in this Deed of Trust or any of the other Loan Documents in such order and manner as Beneficiary may elect in its sole discretion.

---

Section 9.3    Waivers and Agreements Regarding Remedies.

To the full extent Trustor may do so, Trustor hereby:

(a)      agrees that it will not at any time plead, claim or take advantage of any laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption (including statutory and equitable rights of redemption), valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations;

(b)      waives all rights to a marshalling of the assets of Trustor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property without any prior or different resort for collection, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c)      waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d)      waives and relinquishes any and all rights and remedies which Trustor may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties.

Section 9.4    Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Deed of Trust shall run with the Land and shall apply to and bind the successors and assigns of Trustor (including any permitted subsequent owner of the Property), and inure to the benefit of Beneficiary, its successors and permitted assigns and to the successors in trust of Trustee.

Section 9.5    No Warranty by Beneficiary or Trustee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Trustor or to be given to Beneficiary or Trustee pursuant to this Deed of Trust or any of the other Loan Documents, Beneficiary and Trustee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary or Trustee.

Section 9.6    Amendments.

This Deed of Trust may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 9.7    Severability.

In the event any one or more of the provisions of this Deed of Trust or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Deed of Trust or any of the other Loan Documents, then and in either of those events, at the option of Beneficiary, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 9.8    Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided by applicable law or in such other Loan Document, shall be deemed sufficiently given or furnished if given in accordance with the provisions of the Loan Agreement.

Section 9.9    Joint and Several Liability.

If Trustor consists of two (2) or more Persons, the term "Trustor" shall also refer to all Persons signing this Deed of Trust as Trustor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Trustee or Beneficiary may release, compromise, modify or settle with any of Trustor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Trustor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Trustor.

Section 9.10   Governing Law.

Trustor acknowledges that this Deed of Trust was negotiated in the State of Tennessee and made by Trustor and accepted by Beneficiary in the State of Tennessee, which state the parties agree has a substantial relationship to the parties and to the Loan, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, and performance, this Deed of Trust and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Tennessee applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and the federal laws of the United States of America, except that at all times, the provisions for the creation, perfection, priority, and enforcement of the liens and security interests created pursuant to this Deed of Trust with respect to the Property shall be governed by and construed according to the laws of the state in which the Property is located. To the fullest extent permitted by law, Trustor unconditionally and irrevocably waives any claim to assert that the

---

laws of any other jurisdiction governs this Deed of Trust. This Deed of Trust shall be subject to the jurisdiction and venue provisions of Section 11.19 of the Loan Agreement.

Section 9.11 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Trustor and Beneficiary with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Trustor and Beneficiary with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Beneficiary to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 9.12 Time of the Essence.

Time is of the essence in this Deed of Trust.

Section 9.13 Limitation of Liability.

The provisions of Section 11.24 of the Loan Agreement are hereby incorporated by reference into this Deed of Trust to the same extent and with the same force as if fully set forth herein, *mutatis mutandis*.

Section 9.14 Mailing Addresses.

The address of the Trustor, Trustee and Beneficiary set forth in the first paragraph of this Deed of Trust shall be deemed to be the mailing address of the respective party.

Article X  
State-Specific Provisions.

Section 10.1 Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Article X and the terms and conditions of this Deed of Trust, the terms and conditions of this Article X shall control and be binding.

Section 10.2 Power of Sale.

a) If following the occurrence, and during the continuance, of an Event of Default, Beneficiary invokes the power of sale, then with respect to the Property, the following procedures and those outlined in *Utah Code Annotated* § 57-1-19 through § 57-1-36, as hereinafter supplemented and amended, shall apply in place of any inconsistent procedures specified elsewhere in this Deed of Trust. Beneficiary shall execute or cause the Trustee to execute a written notice of the occurrence of an Event of Default and of Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. The Trustee shall give notice of default and

notice of sale and shall sell the Property according to applicable law. The Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and, to the extent permitted by applicable law, in such order as the Trustee may determine. The Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale to the extent permitted by law. Beneficiary or Beneficiary's designee may purchase the Property at any sale. Trustor agrees to surrender possession of the Property to the purchaser immediately after such sale. The Trustee shall deliver to the purchaser a trustee's deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be, to the extent permitted by applicable law, prima facie evidence of the truth of the statements made therein, absent fraud or gross negligence. The Trustee shall apply the proceeds of the sale in the following order: (i) to all reasonable, out-of-pocket costs and expenses of the sale, including, but not limited to, the Trustee's and attorneys' reasonable fees and costs of title evidence; (ii) to all sums secured by this Deed of Trust in such order as Beneficiary in Beneficiary's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto, or the Trustee, in his discretion, may deposit the balance of such proceeds with the clerk of the district court of the county in which the sale took place.

b) Upon any sale made under or by virtue of this Section 10.2, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting to the Obligations of Trustor secured by this Security Agreement such credit bid amount. Beneficiary, upon so acquiring the Property, a property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable law. For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default rate interest and late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary may add all default rate interest and late charges, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Deed of Trust.

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

### Section 10.3 Election to Foreclose as a Mortgage.

During the continuance of an Event of Default, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be

fixed by the court. Trustor hereby waives all rights to the marshaling of Trustor's assets encumbered by this Deed of Trust to the fullest extent permitted by law, including the Property, or any portion thereof, and all rights to require the Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the Debt with interest at the applicable rate set forth in the Note, and third to the Person so entitled. Beneficiary may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. To the extent permitted under Utah law, during any redemption period subsequent to such sale, the amount of Beneficiary's bid entered at such sale shall bear interest at the statutory rate.

#### Section 10.4 Deficiency.

Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. Trustor agrees for purposes of *Utah Code Annotated* § 57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of *Utah Code Annotated* § 57-1-32.

#### Section 10.5 Obligation Secured.

For purposes of *Utah Code Annotated* §§ 57-1-32 and 57-1-28, the total indebtedness secured by this Deed of Trust shall include all amounts payable by Trustor hereunder, including any increased rate of interest, any defeasance or prepayment payments or other amounts or obligations, all of which shall constitute "beneficiary's lien on the trust property."

#### Section 10.6 One Action Rule and Deficiency Statute.

To the extent permitted by applicable law, Trustor knowingly waives the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

#### Section 10.7 Reinstatement.

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

#### Section 10.8 Trustee's Fees and Expenses.



In no event shall Trustor be required to pay to Trustee any fees or compensation in excess of amounts permitted by *Utah Code Annotated* § 57-1-21.5.

Section 10.9 Substitution of Trustee.

Beneficiary, 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 Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the 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 Trustor, Trustee and Beneficiary 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 a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

Section 10.10 Integration.

PURSUANT TO *UTAH CODE ANNOTATED* § 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

Section 10.11 Liens.

Trustor shall promptly discharge any mechanics', laborers', materialmen's or similar lien or any other lien, charge, attachment, or lis pendens filed or recorded against the Property which relates to Trustor or the Property.

Section 10.12 Acceptance of Trust.

The acceptance by Trustee of this trust shall be evidenced by this Deed of Trust, duly executed and acknowledged, and is made a public record as provided by law. The trust created is irrevocable by Trustor.

*(Remainder of Page Intentionally Left Blank)*

SIGNATURE PAGE TO DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING

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

TRUSTOR:

CC Daybreak, LLC, a Delaware  
limited liability company

By: CC Daybreak Member, LLC,  
a Delaware limited liability company  
its Manager

By: Crescent Communities, LLC,  
a Delaware limited liability company  
its Manager

By: [Signature]

Name: JASON LABENTE

Title: CIO

STATE OF North Carolina )  
COUNTY OF Mecklenburg ) ss.

The foregoing instrument was acknowledged before me this 16th day of April, 2021, by JASON LABENTE, the CIO of Crescent Communities, LLC, a Delaware limited liability company, the Manager of CC Daybreak Member, LLC, a Delaware limited liability company, the Manager of CC Daybreak, LLC, a Delaware limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_

**My Commission Expires  
02-04-2024**

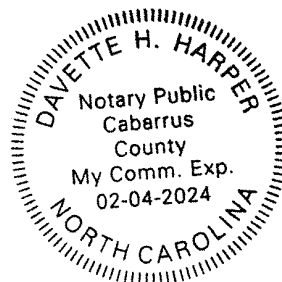


Exhibit A

LOT M-101 AND LOT M-102, DAYBREAK VILLAGE 10 NORTH PLAT 3 AMENDING LOT T3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED, ACCORDING TO THE OFFICIAL PLAT RECORDED ON APRIL 21, 2021 AS ENTRY NO. 13638563 IN BOOK 2021P OF PLATS AT PAGE 96, ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

Tax ID Numbers yet to be assigned (Prior Tax ID: 26-13-301-003)