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APN(s): 27-25-428-004-0000; 27-25-477-001-
0000; 27-25-477-002-0000; 27-25-477-003-
0000; 27-25-477-004-0000; 27-25-477-005-
0000; 27-25-477-009-0000; 27-25-477-012-
0000; 27-25-477-013-0000; 27-25-477-014-
0000; 27-25-477-015-0000

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21-446870

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

by

**TRIVIEW APARTMENT ASSOCIATES II, LLC,
a Utah limited liability company, as Trustor,**

to CHICAGO TITLE INSURANCE COMPANY, INC., a Florida corporation, as Trustee

for the use and benefit of

**CIBC BANK USA,
an Illinois state chartered bank, as Beneficiary**

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PREMISES 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, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PREMISES DESCRIBED HEREIN.

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

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

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "Deed of Trust") is made as of December 22, 2021, by TRIVIEW APARTMENT ASSOCIATES II, LLC, a Utah limited liability company ("Trustor"), whose address is 438 West 12300 South, Suite 101, Draper, Utah 84020, to CHICAGO TITLE INSURANCE COMPANY, INC., a Florida corporation ("Trustee"), for the use and benefit of CIBC BANK USA, an Illinois state chartered bank, as administrative agent ("Administrative Agent") for itself and the other Lenders (as defined in the Loan Agreement, as defined below), together with each party's respective successors and assigns (Administrative Agent and the Lenders are referred to collectively herein as "Beneficiary"), whose address is 1550 Wewatta Street, Suite 520, Denver, Colorado 80202, Attention: Ben Kuruvila.

Recitals

A. Pursuant to the terms and conditions contained in that certain Construction Loan and Security Agreement dated of even date herewith by and among Trustor, the Lenders from time to time party thereto, and Administrative Agent (as the same may be amended, amended and restated, or otherwise modified from time to time, the "Loan Agreement"), Beneficiary has agreed to loan to Trustor the aggregate, maximum principal amount of \$77,000,000.00 (the "Loan"). The Loan shall be evidenced by those certain Promissory Notes of even date herewith (as amended, amended and restated, replaced or otherwise modified from time to time, collectively, the "Notes"), executed by Trustor and made payable to the order of the Lenders in the aggregate, maximum principal amount of the Loan and due on December 22, 2025, subject to extension to December 22, 2026, as provided in the Loan Agreement (the "Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Notes, the Loan Agreement or of any other document or instrument now or hereafter given to evidence or secure the payment of the Notes or delivered to induce Beneficiary to disburse the proceeds of the Loan (the Notes, the Loan Agreement and this Deed of Trust, together with such other documents, as amended, amended and restated, replaced, or otherwise modified from time to time, are collectively referred to herein as the "Loan Documents").

B. A condition precedent to the Lenders' extension of the Loan to Trustor is the execution and delivery by Trustor of this Deed of Trust.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor agrees as follows:

Trustor hereby grants, bargains, sells, warrants, transfers and conveys to Trustee, IN TRUST, **WITH POWER OF SALE**, for the use and benefit of Beneficiary, its successors and assigns, and grants a security interest in, all of the estate, right, title and interests Trustor now has or may later acquire in and to the following described property, rights and interests (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) The real property located in Draper City, County of Salt Lake, State of Utah and legally described on **Exhibit A** attached hereto and made a part hereof ("Real Estate");

(b) All improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Trustor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Trustor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Trustor or on its behalf ("Improvements");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, minerals, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Trustor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Utah, Utah Code Ann. § 70A-1a-101 et seq. (the "Code")) in effect from time to time, escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Trustor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Trustor, so long as no Event of Default (as hereinafter defined) exists, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of Trustor in all leases now or hereafter on the Premises, whether written or oral (each a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Trustor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by Trustor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Trustor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a

part of the realty covered by this Deed of Trust and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Administrative Agent, as a Secured Party, and Trustor, as Debtor, all in accordance with the Code;

(g) All of Trustor's interests in General Intangibles including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Trustor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Trustor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Trustor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

(h) All of Trustor's accounts now owned or hereafter created or acquired, including, without limitation, all of the following now owned or hereafter created or acquired by Trustor: (i) Accounts and Deposit Accounts (each as defined in the Code), including, without limitation, the Operating Accounts (as defined in the Loan Agreement), contract rights, book debts, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to Trustor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) Trustor's rights in, to and under all purchase orders for goods, services or other property; (iii) Trustor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to Trustor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Trustor); (v) Securities, Investment Property, Financial Assets, and Securities Entitlements (each as defined in the Code), (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of Trustor with respect to the Premises;

(i) All development rights associated with the Premises, whether previously or subsequently transferred to the Premises from other real property or now or hereafter susceptible of transfer from the Premises to other real property;

(j) All (i) water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated); (ii) ditches and ditch rights; (iii) spring and spring rights; (iv) reservoir and reservoir rights; and (v) shares of stock in water, ditch and canal companies and all other evidence of such rights, which are now owned or hereafter acquired by Trustor and which are appurtenant to or which have been used in connection with the Premises; and

(k) 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 Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises, unto Trustee, its successors and assigns, forever, in trust for the benefit of Beneficiary, for the purposes and upon the uses herein set forth.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, any SOFR breakage charges, prepayment premiums, if any, exit fees, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by Beneficiary for the benefit of Trustor, if any, and other indebtedness evidenced by or owing under the Notes, the Loan Agreement, any of the other Loan Documents and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) all Rate Management Obligations (as defined in the Loan Agreement), and all obligations and liabilities of Trustor to Beneficiary under and pursuant to any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, executed by and between Trustor and Beneficiary from time to time, including, without limitation, any Rate Management Agreement described in the Loan Agreement (collectively, "Interest Rate Agreements"), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Trustor or any other obligor to or benefiting Beneficiary which are evidenced or secured by or otherwise provided in the Notes, the Loan Agreement, this Deed of Trust or any of the other Loan Documents; and (iv) the reimbursement to Beneficiary of any and all sums incurred, expended or advanced by Beneficiary pursuant to any term or provision of or constituting additional indebtedness under or secured by this Deed of Trust, any of the other Loan Documents or any Interest Rate Agreements or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Trustor represents, warrants and covenants that (a) Trustor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Beneficiary and as otherwise described on Exhibit B to the Title Policy (as defined in the Loan Agreement) (the "Permitted Exceptions"); and (b) Trustor has legal power and authority to mortgage and convey the Premises.

2. Maintenance, Repair, Restoration, Prior Liens, Parking. Trustor covenants that, so long as any portion of the Indebtedness remains unpaid, Trustor will:

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

(b) keep the Premises in good condition and repair, without waste (ordinary wear and tear excepted), and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Trustor's right to contest liens as permitted by the terms of **Section 27** hereof);

(c) pay when due the Indebtedness in accordance with the terms of the Notes and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Trustor under the Notes, this Deed of Trust and the other Loan Documents;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit reasonably satisfactory evidence of the discharge of such lien to the Beneficiary (subject to Trustor's right to contest liens as permitted by the terms of **Section 27** hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

(f) comply in all material respects with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Deed of Trust;

(h) make no material alterations in the Premises or demolish any material portion of the Premises without Beneficiary's prior written consent (which consent may not be unreasonably withheld, conditioned, or delayed), except as required by law or municipal ordinance and except as provided in the Loan Agreement;

(i) suffer or permit no change in the use or general nature of the Premises, without the Beneficiary's prior written consent;

(j) pay when due all operating costs of the Premises;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Beneficiary's prior written consent;

(l) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

(m) comply, and shall cause the Premises at all times to be operated in compliance, in all material respects, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations;

(n) not, without the prior written approval of Beneficiary, which may be withheld for any reason, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or allow to occur any other event, that would reasonably be expected to result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Premises, and this provision shall, to the maximum extent permitted by applicable law, serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or

districts exist or are being formed that, should Trustor or any other person or entity include all or any portion of the Premises in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, the rights of Beneficiary in the Premises pursuant to this Deed of Trust or following any foreclosure of this Deed of Trust, and the rights of any person or entity to whom Beneficiary might transfer the Premises following a foreclosure of this Deed of Trust, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Premises or any portion thereof as a result of inclusion of the Premises in such district or districts; and

(o) not, without the prior written approval of Beneficiary, which may be withheld for any reason, sell, transfer, assign, convey or encumber Trustor's water rights (if any).

3. Payment of Taxes and Assessments. Trustor will pay prior to delinquency 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 (all herein generally called "Taxes"), whether or not assessed against Trustor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Trustor's right to contest the same, as provided by the terms hereof; and Trustor will, upon written request, furnish to Beneficiary duplicate receipts therefor within ten (10) days after Beneficiary's written request.

4. Tax and Insurance Deposits.

(a) At Beneficiary's option, while any Event of Default exists, Trustor shall deposit with Beneficiary, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of one hundred percent (100%) of the most recent ascertainable annual Taxes on the Premises. If requested by Beneficiary while any Event of Default exists, Trustor shall also deposit with Beneficiary an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as reasonably estimated by Beneficiary. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. Without limiting and subject to the terms of **Section 5** below, if funds are deposited pursuant to this subsection (a), Beneficiary shall, at its option, either (x) pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Trustor) or (y) release sufficient funds to Trustor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Trustor shall, within ten (10) Business Days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If, while an Event of Default exists, the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits, or refunded to Trustor if there is no Unmatured Default or Event of Default then existing and no subsequent deposits are required to be made by Trustor under this subsection (a). Said deposits need not be kept separate and apart from any other funds of Beneficiary. Beneficiary, in making

any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

(b) Following the earlier to occur of (i) any failure by Trustor to maintain any insurance required by the Loan Agreement and/or this Deed of Trust, or (ii) the occurrence of any Event of Default and for so long as the same is continuing, Trustor shall deposit with Beneficiary, on the first day of each month until this Deed of Trust has been released of record, a sum equal to one-twelfth (1/12th) of one hundred percent (100%) of the most recent ascertainable annual insurance premiums required to be maintained by Trustor pursuant to the Loan Agreement and this Deed of Trust. If requested by Beneficiary while any Event of Default exists, Trustor shall also deposit with Beneficiary for the benefit of Beneficiary an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual insurance premiums for the current calendar year become due, shall be sufficient to pay in full such installment of annual insurance premiums, as reasonably estimated by Beneficiary. Such deposits are to be held without any allowance of interest and are to be used for the payment of insurance premiums next due and payable when they become due. Without limiting and subject to the terms of **Section 5** below, if funds are deposited pursuant to this subsection (b), Beneficiary shall, at its option, either (x) pay such insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Trustor) or (y) release sufficient funds to Trustor for the payment thereof. If, while an Event of Default exists, the funds so deposited are insufficient to pay any such insurance premiums for any year (or installments thereof, as applicable) when the same shall become due and payable, and an Event of Default exists, Trustor shall, within ten (10) Business Days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such insurance premiums in full. If the funds so deposited exceed the amount required to pay such insurance premiums for any year, the excess shall be applied toward subsequent deposits, or refunded to Trustor if there is no Unmatured Default or Event of Default then existing and no subsequent deposits are required to be made by Trustor under this subsection (b). Said deposits need not be kept separate and apart from any other funds of Beneficiary. Beneficiary, in making any payment hereby authorized relating to insurance premiums, may do so according to any bill, statement or estimate procured from the appropriate insurer without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. Beneficiary's Interest In and Use of Deposits. Notwithstanding anything in this Deed of Trust to the contrary, while an Event of Default exists, Beneficiary may, at its option, apply any monies at the time on deposit pursuant to **Section 4** hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Beneficiary may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Trustor shall promptly, upon demand by Beneficiary, deposit with Beneficiary an amount equal to the amount expended by Trustor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Trustor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Trustor. Beneficiary shall not be liable for any failure to apply to the payment of Taxes any

amount so deposited unless Trustor, prior to an Event of Default, shall have requested Beneficiary in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Beneficiary shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party. Any funds not used to cure an Event of Default or to pay any of the Indebtedness as provided in this **Section 5** shall be applied as provided in **Section 4** above.

6. Insurance.

(a) Trustor shall at all times keep the Premises insured in accordance with the requirements set forth in **Exhibit D** to the Loan Agreement and made a part hereof. Trustor shall also provide such other insurance as Beneficiary may from time to time reasonably require. Unless Trustor provides Beneficiary evidence of the insurance coverages required under the Loan Agreement and this Deed of Trust, Beneficiary may purchase insurance at Trustor's expense to cover Beneficiary's interest in the Premises. The insurance may, but need not, protect Trustor's interest. The coverages that Beneficiary purchases may not pay any claim that Trustor makes or any claim that is made against Trustor in connection with the Premises. Trustor may later cancel any insurance purchased by Beneficiary (and Beneficiary agrees to reasonably cooperate to effectuate that cancellation), but only after providing Beneficiary with evidence that Trustor has obtained insurance as required by the Loan Agreement and this Deed of Trust. If Beneficiary purchases insurance for the Premises, Trustor will be responsible for Beneficiary's actual out-of-pocket costs of such insurance, together with interest and any other charges which Beneficiary may reasonably impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Trustor may be able to obtain on its own.

(b) Trustor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Beneficiary and such separate insurance is otherwise acceptable to Beneficiary.

(c) Trustor's general contractor, architect and engineer, as applicable, shall be required to provide professional liability insurance in accordance with the requirements set forth in **Exhibit D** to the Loan Agreement, and such other insurance as Beneficiary may from time to time reasonably require.

(d) In the event of loss, Trustor shall give prompt notice thereof to Beneficiary, who, if such loss exceeds twenty-five percent (25.00%) of the full replacement value of the Premises (the "Threshold"), shall have the sole and absolute right to make proof of loss. Regardless of the availability of insurance proceeds, Trustor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises immediately prior to being damaged or destroyed. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i) through (iv) of the immediately succeeding subsection are not satisfied, then Beneficiary, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or

less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, (iii) Beneficiary determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, and (iv) the total of the insurance proceeds and such additional amounts placed on deposit with Beneficiary by Trustor for the specific purpose of rebuilding or restoring the Improvements equals or exceeds, in the sole but reasonable discretion of Beneficiary, the reasonable costs of such rebuilding or restoration, then Beneficiary shall endorse to Trustor any such payment and Trustor may collect such payment directly. Beneficiary shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Beneficiary pursuant to the terms of this section, after the payment of all of Beneficiary's expenses, either (A) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Beneficiary may declare the whole of the balance of Indebtedness plus any prepayment premiums, exit fees and SOFR breakage costs described in the Loan Agreement to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subsection (e) below; provided, however, that Beneficiary hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of subsection (e) below, if (1) Administrative Agent is satisfied that, after completion of such reconstruction, the Premises shall achieve the Imputed Debt Service Coverage Ratio requirement under the Loan Agreement, if applicable, (2) Beneficiary has received reasonably satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (3) Beneficiary has received evidence that the Premises can be restored to substantially the same condition and value that it had prior to being damaged or destroyed, (4) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists. Any insurance proceeds applied on account of the unpaid principal balance of the Notes shall be subject to any prepayment premiums, exit fees and SOFR breakage costs described in the Loan Agreement. In the event of foreclosure of this Deed of Trust, all right, title and interest of Trustor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(e) If insurance proceeds are made available by Beneficiary to Trustor, Trustor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Trustor shall obtain from Beneficiary its approval of all site and building plans and specifications, construction, architectural and engineering contracts, and permits and licenses, pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subsection (d) above (which payment or application may be made, at Beneficiary's option, through an escrow, the terms and conditions of which are satisfactory to Beneficiary and the cost of which is to be borne by Trustor), Beneficiary shall be satisfied as to the following:

(A) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(B) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Deed of Trust, the Assignment (as defined below) and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, Trustor has deposited with Beneficiary such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises;

(C) prior to each disbursement of any such proceeds, Beneficiary shall be furnished with a statement of Beneficiary's architect (the cost of which shall be borne by Trustor, but which may be paid from proceeds to the extent proceeds exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Beneficiary and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Beneficiary shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(D) if requested by Beneficiary, Trustor shall, at Trustor's sole cost and expense, cause the Title Company to issue a date-down endorsement to the Title Policy in form and substance acceptable to Beneficiary in Beneficiary's sole discretion.

(iii) If Trustor shall fail to be diligently restoring, repairing or rebuilding the Improvements in such a manner that A Beneficiary reasonably determines that the same will not be completed not later than six (6) months prior to the Maturity Date, then Beneficiary, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Trustor, or (b) declare an Event of Default.

(f) If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

7. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Beneficiary, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Trustor and the same shall

be paid forthwith to Beneficiary. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Beneficiary may declare the whole of the balance of the Indebtedness plus any prepayment premiums, exit fees and SOFR breakage costs described in the Loan Agreement to be due and payable. Notwithstanding the provisions of this Section to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Beneficiary, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Trustor, and Beneficiary hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

8. Stamp Tax. If at any time the United States government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps or levies any tax on this Deed of Trust, the Notes, the Loan Agreement, any other Loan Document or the Loan, or requires payment of any tax in the nature of or comparable to the United States Interest Equalization Tax on the Indebtedness, then Trustor shall pay such tax, including interest and penalties, in the required manner.

9. Lease Assignment. Trustor acknowledges that, concurrently herewith, Trustor has executed and delivered to Beneficiary, as additional security for the repayment of the Loan, an Assignment of Rents and Leases (as the same may be amended, amended and restated, or otherwise modified from time to time, the "Assignment") pursuant to which Trustor has assigned to Beneficiary interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Deed of Trust. Trustor agrees to abide by all of the provisions of the Assignment. This Section 9 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 9 and the provisions of the Utah Act, the provisions of the Utah Act shall control. Beneficiary shall have all rights and remedies available under the Utah Act and to the extent allowed by law those rights and remedies shall be cumulative with all rights and remedies hereunder.

10. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Notes is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Trustor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, release or change.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment, after the date of this Deed of Trust, of any law of the United States, or any state or political subdivision thereof, (a) deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon; (b) imposing upon Beneficiary the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Trustor; or

(c) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Trustor's interest in the Premises, or the manner of collection of taxes, so as to affect this Deed of Trust or the Indebtedness (each, a "Tax Law Change"), then Trustor, upon demand by Beneficiary, and as required by law, shall pay such taxes, assessments, charges, or liens or reimburse Beneficiary therefor. If it would be unlawful to require Trustor to make such payment or the making of such payment would reasonably be expected to result in the imposition of interest beyond the maximum amount permitted by law, then either the applicable provisions of the Loan Agreement shall apply or Beneficiary may, by written notice to Trustor of not less than one hundred twenty (120) days, declare all of the Indebtedness to be immediately due and payable. Nothing contained in this Section shall be construed as obligating Trustor to pay any portion of Beneficiary's federal, state and local income tax.

12. Beneficiary's Performance of Defaulted Acts and Expenses Incurred by Beneficiary. If an Event of Default exists, Beneficiary may, but need not, make any payment or perform any act herein required of Trustor in any form and manner deemed expedient by Beneficiary, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Trustor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Beneficiary in regard to any tax referred to in **Section 8** above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Beneficiary in connection with (a) sustaining the lien of this Deed of Trust or its priority, (b) protecting or enforcing any of Beneficiary's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Notes, the Loan Agreement, this Deed of Trust, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any litigation or proceedings threatened in writing affecting the Notes, the Loan Agreement, this Deed of Trust, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section shall be immediately due and payable by Trustor to Beneficiary, and shall be additional Indebtedness evidenced by the Notes and secured by this Deed of Trust. Beneficiary's failure to act shall never be considered as a waiver of any right accruing to Beneficiary on account of any Event of Default. Should any amount paid out or advanced by Beneficiary hereunder, or pursuant to any agreement executed by Trustor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Beneficiary shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Security Agreement. Trustor and Beneficiary agree that this Deed of Trust shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at

any time on deposit for the benefit of Trustor or held by Beneficiary (whether deposited by or on behalf of Trustor or anyone else) pursuant to any of the provisions of this Deed of Trust or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Deed of Trust, which personal property may not be deemed to be affixed to the Premises or may not constitute a Fixture (within the meaning of Chapter 9a-102(41) of the Code)(such personal property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and "Supporting Obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to Beneficiary, and the Collateral and all of Trustor's right, title and interest therein are hereby assigned to Beneficiary, all to secure payment of the Indebtedness. All of the provisions contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the applicability of any other provision of this Deed of Trust but shall be in addition thereto:

(a) Trustor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Beneficiary and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Trustor solely for business purposes.

(c) The tangible Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Beneficiary (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Trustor, Beneficiary and holders of interests, if any, expressly permitted hereby.

(e) No financing statement (other than financing statements showing Beneficiary as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Trustor, at its own cost and expense, upon demand, will furnish to Beneficiary such further information and will execute and deliver to Beneficiary such financing statements and other documents in form satisfactory to Beneficiary and will do all such acts as Beneficiary may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Beneficiary and no other party and liens and encumbrances (if any) expressly permitted hereby; and Trustor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Beneficiary to be desirable. Trustor hereby irrevocably authorizes Beneficiary at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of Trustor that (i) indicate the Collateral (A) is comprised of all assets of Trustor or words of similar

effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organizational identification number issued to Trustor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Beneficiary in any jurisdiction prior to the date of this Deed of Trust. In addition, Trustor shall make appropriate entries on its books and records disclosing Beneficiary's security interests in the Collateral.

(f) While an Event of Default exists hereunder, Beneficiary shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Trustor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral (subject to the right of redemption in conjunction with a judicial foreclosure, if applicable), as provided in the Code and other applicable law. Beneficiary may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Beneficiary may require Trustor to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary which is reasonably convenient to both parties. Beneficiary will give Trustor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Trustor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Beneficiary may buy at any public sale. Beneficiary may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Beneficiary so elects, the Premises and the Collateral may be sold as one lot in accordance with Utah Code Ann. § 70A-9a-601 or other applicable law. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, shall be applied against the Indebtedness in such order or manner as Beneficiary shall select. Beneficiary will account to Trustor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Deed of Trust is intended to be a financing statement within the purview of Section 9a-502(2) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Trustor (Debtor) and Beneficiary (Secured Party) are herein below set forth. This Deed of Trust is to be filed for recording with the Clerk and Recorder for the county or counties where the Premises are located. Trustor is the record owner of the Premises.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Trustor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Trustor, as lessor thereunder.

(j) Trustor represents and warrants that: (i) Trustor is the record owner of the Premises; (ii) Trustor's chief executive office is located in the State of Utah; (iii) Trustor's state of formation is the State of Utah; (iv) Trustor's exact legal name is as set forth in Section the preamble of this Deed of Trust; and (v) Trustor's organizational identification number is 10505757-0160.

(k) Trustor hereby agrees that: (i) where Collateral is in possession of a third party, Trustor will join with Beneficiary in notifying the third party of Beneficiary's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Beneficiary; (ii) Trustor will cooperate with Beneficiary in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Trustor will not change the state where it is located or change its name or form of organization without giving the Beneficiary at least 30 days' prior written notice in each instance.

14. Restrictions on Transfer. Trustor shall comply with Section 7.11 of the Loan Agreement.

15. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Deed of Trust:

(a) the occurrence of an "Event of Default" as defined in the Loan Agreement or any other Loan Document;

(b) the failure of Trustor to comply with any of the terms conditions or requirements set forth in **Sections 1, 2(c), 2(d), 2(k), 2(n), 2(o), 3, 4, 6, 7, 8, 11, 13, 14, 23, 27, 28, 30 or 32** of this Deed of Trust;

(c) the failure by Trustor to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Trustor contained in this Deed of Trust and not specifically referred to elsewhere in this **Section 15**; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Deed of Trust or any of the other Loan Documents and the value of the Premises is not

impaired, threatened or jeopardized, then Trustor shall have a period ("Cure Period") of thirty (30) days after Trustor obtains actual knowledge of such failure or receives written notice from Beneficiary of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if such failure cannot be cured by the payment of money and Trustor commences to cure such non-monetary failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for such non-monetary failure for sixty (60) additional days, but in no event shall the Cure Period be longer than ninety (90) days in the aggregate; or

(d) the occurrence of any default or event of default, after the expiration of any applicable periods of notice or cure, under any document or agreement evidencing or securing any other obligation or indebtedness of Trustor to Beneficiary.

If an Event of Default exists, Beneficiary may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Trustor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

16. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Beneficiary shall have the right to exercise any right, power or remedy provided in this Deed of Trust, any of the other Loan Documents, and/or applicable law, including but not limited to foreclosing this Deed of Trust, either by judicial action or through Trustee pursuant to the exercise of the power of sale granted hereunder, in each case in accordance with applicable law, including but not limited to Utah Code Ann. § 57-1-20 through 57-1-36. If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or en masse, to the extent allowed by law. The exercise of the power of sale granted hereby will be initiated in accordance with applicable law, including but not limited to Beneficiary's directing Trustee to execute and record in the official records of the county where the Real Estate is located a notice of default and election to sell. Upon the recordation of such notice of default and election to sell, Trustee shall promptly comply with all notice and other requirements of the laws of Utah then in force with respect to such sale. Any sale conducted by Trustee pursuant to this Section shall be held in accordance with applicable law at a courthouse serving the county where the Real Estate is located, or such other location which may be permitted by applicable law. All fees, costs and expenses of any kind incurred by Beneficiary in connection with foreclosure of this Deed of Trust, including, without limitation, the costs, fees and expenses of the Trustee, the costs of any appraisals of the Premises obtained by Beneficiary, all costs of any receivership for the Premises advanced by Beneficiary, all costs of any environmental audits or tests incurred by Beneficiary, all reasonable attorneys' and consultants' fees incurred by Beneficiary and all other costs and expenses authorized by applicable law, shall constitute a part of the Indebtedness and may be included as part of the amount owing from Trustor to Beneficiary at any foreclosure sale. Subject to the requirements of applicable law (including, without limitation, Utah Code Ann. § 57-1-29), the proceeds of any sale under this Section shall be applied first to the fees and expenses of the Trustee or other officer conducting the sale (all of which shall be part of the obligations secured by this Deed of Trust), and then to the reduction or discharge of the

Indebtedness in the order Beneficiary may elect; any surplus remaining shall be paid over to Trustor or to such other person or persons as may be lawfully entitled to such surplus. Beneficiary may bid at any such foreclosure sale, and in connection therewith Beneficiary may credit bid all or any portion of the Indebtedness (including, without limitation, the Trustee's fees and expenses, Beneficiary's reasonable attorneys' and appraisal fees, all other expenses incurred by Beneficiary in undertaking the foreclosure and all other costs and expenses authorized by applicable law) to the extent permitted by Utah Code Ann. § 57-1-28. In the event of a foreclosure sale, Beneficiary is hereby authorized, without the consent of Trustor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Beneficiary may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) All expenditures and expenses of the nature mentioned in this Section 16 and such other expenses and fees as may be incurred in the enforcement of Trustor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Notes, the Loan Agreement or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Trustor, with interest thereon until paid at the Default Rate and shall be secured by this Deed of Trust.

17. Rate After Sale. In the event the Premises shall be sold upon foreclosure hereof in the manner provided by law for the foreclosure of mortgages on real property, the sum for which the same shall have been sold shall, for purposes of redemption, bear interest at the Default Rate.

18. Appointment of Receiver. At any time while an Event of Default exists, Beneficiary shall be entitled, as a matter of absolute right and without regard to the value of any security for the Indebtedness or the solvency of any person liable therefor, to the appointment of a receiver for the Premises upon ex parte application to any court of competent jurisdiction. Trustor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered (a) to take possession of the Premises and any businesses conducted by Trustor or any other person thereon and any business assets used in connection therewith, (b) to exclude Trustor and Trustor's agents, servants, and employees from the Premises, (c) to collect the rents, issues, profits, and income therefrom, (d) to complete any construction which may be in progress, (e) to do such maintenance and make such repairs and alterations as the receiver reasonably deems necessary, (f) to use all stores of materials, supplies, and maintenance equipment on the Premises and replace such items at the expense of the receivership estate, (g) to pay all taxes and assessments against the Premises and the Chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally to do anything which Trustor could legally do if Trustor were in possession of the Premises. All expenses incurred by the receiver or his agents shall constitute a part of the Indebtedness. Any revenues collected by the receiver shall, subject to applicable law, be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Indebtedness in such order or manner as Beneficiary may in its sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any

such receivership will continue until the Indebtedness have been discharged in full, or until title to the Premises has passed after foreclosure sale.

19. Beneficiary's Right of Possession in Case of Default. At any time while an Event of Default exists, Trustor shall, upon demand of Beneficiary, surrender to Beneficiary possession of the Premises. Beneficiary, in its discretion, may, with process of law and subject to the rights of tenants under Leases, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Trustor and its employees, agents or servants therefrom, and Beneficiary may then hold, operate, manage and control the Premises, either personally or by its agents. Beneficiary shall have full power to use such measures, legal or equitable, as in its discretion may be deemed reasonably prudent or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Beneficiary shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Trustor to cancel the same;
- (b) subject to applicable law affecting the rights of tenants of the Premises, elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then-existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of 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 Trustor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Beneficiary reasonably deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Beneficiary's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

20. Application of Income Received by Beneficiary. Beneficiary, in the exercise of the rights and powers hereinabove conferred upon it, shall, to the maximum extent permitted by applicable law, have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Beneficiary may determine:

- (a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Beneficiary and its agent or agents, if management be delegated to an agent or agents, and shall

also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

21. Compliance with Utah Law.

(a) If any provision in this Deed of Trust shall be inconsistent with any provision of Utah law, provisions of Utah law shall take precedence over the 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 Utah law.

(b) If any provision of this Deed of Trust shall grant to Beneficiary (including Beneficiary acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of **Section 18** of this Deed of Trust any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Beneficiary or in such receiver under Utah law in the absence of said provision, Beneficiary and such receiver shall be vested with the powers, rights and remedies granted under Utah law to the full extent permitted by law.

22. Rights Cumulative. Each right, power and remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at 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 as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of 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 Beneficiary in the exercise of any right, power or remedy accruing hereunder 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.

23. Beneficiary's Right of Inspection. Beneficiary and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours' prior notice to Trustor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

24. Release Upon Payment and Discharge of Trustor's Obligations. Beneficiary shall cause Trustee to release this Deed of Trust and the lien hereof by proper instrument upon indefeasible payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Beneficiary in connection with the execution of such release.

25. Notices. Any notices, communications and waivers under this Deed of Trust shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by

registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Administrative Agent: CIBC Bank USA
120 S. LaSalle Street
Chicago, Illinois 60603
Attention: Loan Closing / Loan Operations

With a copy to: CIBC Bank USA
1550 Wewatta Street, Suite 520
Denver, Colorado 80202
Attention: Ben Kuruvila

With a copy to: Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Kyle Blackmer

To Trustor: TriView Apartment Associates II, LLC
438 West 12300 South, Suite 101
Draper, Utah 84020
Attention: Christopher J. Miller

With copy to: Kirton McConkie
Kirton McConkie Building
50 E. South Temple #400
Salt Lake City, Utah 84111
Attention: Loyal C. Hulme David S. Wilson

With copy to: CLF II-PE Draper Member LLC
2728 North Harwood Street, 2nd Floor
Dallas, Texas 75201
Attention: Robin Potts

With copy to: CLF II-PE Draper Member LLC
2728 North Harwood Street, 2nd Floor
Dallas, Texas 75201
Attention: Maria Stamolis

With copy to: CLF II-PE Draper Member LLC
2728 North Harwood Street, 2nd Floor
Dallas, TX 75201
Attention: CPRE Legal Department

With copy to: Winston & Strawn LLP
333 South Grand Avenue, 38th Floor
Los Angeles, California 90071
Attention: Bruce W. Fraser, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

26. Waiver of Rights. Trustor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) Trustor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Deed of Trust, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Trustor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by Utah law;

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

(c) If Trustor is a trustee, Trustor represents that the provisions of this **Section 26** (including the waiver of reinstatement and redemption rights) were made at the express direction of Trustor's beneficiaries and the persons having the power of direction over Trustor, and are made on behalf of the trust estate of Trustor and all beneficiaries of Trustor, as well as all other persons mentioned above; and

(d) To the extent permitted by law, Trustor hereby waives all rights to any homestead or other exemption to which Trustor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

27. Contests. Notwithstanding anything to the contrary herein contained, Trustor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (each, a "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

(a) Trustor shall forthwith give notice of any Contested Lien to Beneficiary at the time the same shall be asserted and comply with the requirements of **Section 7.4** of the Loan Agreement;

(b) Trustor shall either pay under protest or deposit with Beneficiary the full amount ("Lien Amount") of such Contested Lien, together with such amount as Beneficiary may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Trustor may furnish to Beneficiary a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Beneficiary and which will be, if applicable, in an amount sufficient to release any such mechanic lien of record;

(c) Trustor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Beneficiary to be represented in any such contest and shall pay all expenses incurred, in so doing, including reasonable fees and expenses of Beneficiary's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) Trustor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Trustor, or (ii) forthwith upon demand by Beneficiary if, in the reasonable opinion of Beneficiary, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Trustor shall fail so to do, Beneficiary may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Beneficiary to obtain the release and discharge of such liens; and any amount expended by Beneficiary in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Beneficiary may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

28. Expenses Relating to Notes and Deed of Trust.

(a) Trustor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Notes, the Loan Agreement, this Deed of Trust or any of the other Loan Documents, including without limitation, Beneficiary's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Notes, this Deed of Trust and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Deed of Trust and all federal, state, county and municipal taxes, and other taxes (provided Trustor shall not be required to pay any income or franchise taxes of Beneficiary), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes and this Deed of Trust. Trustor recognizes that, during the term of this Deed of Trust, Beneficiary:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Beneficiary shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations while an Event of Default exists hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations while an Event of Default exists hereunder for, and do work in connection with, Beneficiary's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Trustor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Trustor or any of its agents, employees or attorneys pertaining to Beneficiary's approval of actions taken or proposed to be taken by Trustor which approval is required by the terms of this Deed of Trust.

(b) All expenses, charges, costs and fees described in this Section 28 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Trustor forthwith upon demand.

29. [Intentionally Omitted.]

30. Statement of Indebtedness. Trustor, within seven (7) days after being so requested by Beneficiary, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Deed of Trust, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31. Further Instruments. Upon request of Beneficiary, Trustor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Deed of Trust and of the other Loan Documents.

32. Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Deed of Trust secures more than the stated principal amount of the Notes and interest thereon; this Deed of Trust secures any and all other amounts which may become due under the Notes, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Beneficiary to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Deed of Trust.

33. Indemnity. Trustor hereby covenants and agrees that no liability shall be asserted or enforced against Beneficiary in the exercise of the rights and powers granted to

Beneficiary in this Deed of Trust, and Trustor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of Beneficiary. Trustor shall indemnify and save Beneficiary harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Beneficiary at any time by any third party to the extent the same relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Beneficiary may or does become a party, either as plaintiff or as a defendant, by reason of this Deed of Trust or for the purpose of protecting the lien of this Deed of Trust; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Beneficiary in accordance with the terms of this Deed of Trust; provided, however, that Trustor shall not be obligated to indemnify or hold Beneficiary harmless from and against any Claims to the extent arising from the gross negligence or willful misconduct of Beneficiary. All costs provided for herein and paid for by Beneficiary shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Beneficiary and with interest thereon from the date incurred by Beneficiary until paid at the Default Rate.

34. Compliance with Environmental Laws. Concurrently herewith Trustor and Guarantors (as defined in the Loan Agreement) have executed and delivered to Beneficiary that certain Environmental Indemnity Agreement dated as of the date hereof ("Indemnity") pursuant to which Trustor and Guarantors have indemnified Beneficiary for environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Deed of Trust shall secure the obligations of Trustor thereunder.

35. Miscellaneous.

(a) Successors and Assigns. This Deed of Trust and all provisions hereof shall be binding upon and enforceable against Trustor and its assigns and other successors. This Deed of Trust and all provisions hereof shall inure to the benefit of Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Notes.

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Deed of Trust is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Trustor and Beneficiary shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Deed of Trust and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Deed of Trust is to be construed in accordance with and governed by the laws of the State of Utah.

(c) Municipal Requirements. Trustor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Trustor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill

any governmental or municipal requirement. Any act or omission by Trustor which would result in a violation of any of the provisions of this subsection shall be void.

(d) Option of Beneficiary to Subordinate. At the option of Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Beneficiary of a unilateral declaration to that effect and the recording thereof with the Clerk and Recorder for the county or counties wherein the Premises are situated.

(e) Beneficiary in Possession. Nothing herein contained shall be construed as constituting Beneficiary a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(f) Relationship of Beneficiary and Trustor. Beneficiary shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Trustor or of any lessee, operator, concessionaire or licensee of Trustor in the conduct of their respective businesses, and, without limiting the foregoing, Beneficiary shall not be deemed to be such partner, joint venturer, agent or associate on account of Beneficiary becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust, any of the other Loan Documents, or otherwise. The relationship of Trustor and Beneficiary hereunder is solely that of debtor/creditor.

(g) Time of the Essence. Time is of the essence of the payment by Trustor of all amounts due and owing to Beneficiary under the Notes, the Loan Agreement and the other Loan Documents and the performance and observance by Trustor of all terms, conditions, obligations and agreements contained in this Deed of Trust and the other Loan Documents.

(h) No Merger. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Premises, and if Beneficiary acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary 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.

(i) Consent to Jurisdiction. TO INDUCE BENEFICIARY TO ACCEPT THE NOTES, TRUSTOR IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTES AND THIS DEED OF TRUST WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY OR COUNTIES IN WHICH THE PREMISES ARE LOCATED ("AGREED VENUES"). TRUSTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE AGREED VENUES, WAIVES PERSONAL SERVICE OF PROCESS UPON TRUSTOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO TRUSTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(j) Waiver of Jury Trial. TRUSTOR AND BENEFICIARY (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE

OR DEFEND ANY RIGHTS (A) UNDER THIS DEED OF TRUST OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS DEED OF TRUST OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. TRUSTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST BENEFICIARY OR ANY OTHER PERSON INDEMNIFIED UNDER THIS DEED OF TRUST ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(k) Complete Agreement. This Deed of Trust, the Notes, the Loan Agreement 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 Trustor and Beneficiary.

(l) Construction Loan. The Notes evidence a debt created by one or more disbursements made by Beneficiary to Trustor to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement, both obligatory and optional, up to such amount, to the same extent and with the same effect and priority as if such total amount had been fully disbursed on or before the date of recording of this Deed of Trust.

[Remainder of page intentionally left blank; signature and acknowledgement follow]

IN WITNESS WHEREOF, Trustor has executed and delivered this Deed of Trust the day and year first above written.

TRUSTOR:

TRIVIEW APARTMENT ASSOCIATES II, LLC, a Utah limited liability company

By: Triview Apartment Associates II Holdings, LLC, a Delaware limited liability company, its sole member

By: 123 Draper Partners, LLC, a Delaware limited liability company, its operating member

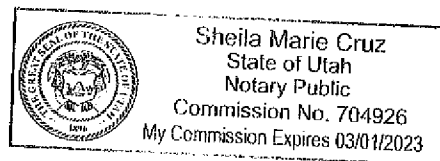
By: Miller Property Investments II, LLC, a Utah limited liability company, its manager

By: Christopher J. Miller
Christopher J. Miller
Manager

STATE OF Utah)
COUNTY OF Salt Lake) ss:

The foregoing instrument was acknowledged before me this 13 day of December, 2021, by Christopher J. Miller, as manager of Miller Property Investments II, LLC, a Utah limited liability company, as manager of 123 Draper Partners, LLC, a Delaware limited liability company, as operating member of Triview Apartment Associates II Holdings, LLC, a Delaware limited liability company, as sole member of Triview Apartment Associates II, LLC, a Utah limited liability company.

Witness my hand and official seal.



My commission expires: 3/1/2023

[Signature]
Notary Public

Signature Page - Construction Deed of Trust, Security Agreement,
Assignment of Rents and Lease and Fixture Filing

EXHIBIT A
to
CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND
LEASES AND FIXTURE FILING

LEGAL DESCRIPTION OF PREMISES

Real property located in Salt Lake County, Utah, and more fully described as:

PARCEL 1:

Beginning at a point on the West right-of-way line of a State access road, said point being North 1279.50 feet West 274.13 feet to a point on a curve to the left, the radius point of which is South 74°42'28" West 1859.86 feet and Northwesterly along the arc of said curve and said West right-of-way line 62.64 feet from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°36' West 161.00 feet; thence North 20°07' West 67.80 feet; thence South 89°51' West 65.00 feet to the East right-of-way line of the Salt Lake and Jordan Canal; thence North 2°12' West along said East right-of-way line 70.84 feet to a fence; thence South 89°08' East along fence line 14.60 feet to fence corner; thence North 2°00' West along fence line 25.50 feet to the South right-of-way line of 12300 South Street; thence North 89°51' East along said South right-of-way line 182.20 feet to the West right-of-way line of State access road; thence South 19°52' East along said West right-of-way line 84.80 feet to a point of 1859.86 feet radius curve to the right; thence Southeasterly along the arc of said curve 85.85 feet to the point of beginning.

Less and Except the following three (3) tracts:

Tract 1:

Beginning at a point located North 467.917 meters and West 161.953 meters and South 2°00'37" East 10.513 meters from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 2°00'37" East 7.774 meters; thence North 89°08'37" West 4.451 meters; thence South 2°12'00" East 10.599 meters; thence South 89°10'00" East 7.920 meters; thence North 2°10'28" West 18.413 meters; thence North 89°51'00" West 3.450 meters to the point of beginning.

Tract 2:

A tract of land in fee, being part of an entire tract of property, located in the Northeast quarter of the Southeast quarter of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said tract are described as follows:

Beginning at a point on the Easterly boundary of said entire tract, which point is approximately 1447.89 feet North 00°21'09" East and 337.58 feet West from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 19°52'00" East 28.53 feet along Easterly boundary of said entire tract; thence 58.14 feet along the arc of a 1859.86-foot radius curve to the right along the Easterly boundary of said entire tract (Chord to said curve bears South 18°58'16" East 58.14 feet); thence 95.20 feet along the arc of a 64.00-foot radius curve to the right to the Easterly boundary of said entire tract (Chord to said curve bears North 19°15'57" West 86.66 feet) to the point of beginning.

Exhibit A
Page 1

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Tract 3:

A tract of land in fee, being part of an entire tract of property, located in the Northeast quarter of the Southeast quarter of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said tract are described as follows:

Beginning at the Northeast corner of said entire tract, which point is approximately 1500.81 feet North 00°21'09" East and 357.03 feet West from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 19°52'00" East 9.78 feet along the Easterly boundary of said entire tract to the Southerly right of way line of 12300 South Street; thence North 89°44'02" West 79.47 feet along said Southerly right of way line; thence North 88°35'18" West 94.66 feet to the Westerly boundary of said entire tract; thence North 02°10'28" West 6.05 feet along said Westerly boundary; thence North 89°51'00" East 171.01 feet along the Northerly boundary line of said entire tract to the point of beginning.

PARCEL 2:

Beginning at a point on the West right-of-way line of a State access road, said point being North 1279.50 feet and West 274.13 feet, more or less, from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point of beginning also being on a curve to the left, the radius point of which is South 74°42'28" West 1859.86 feet, and running thence Northwesterly along the arc of said curve and said West right of way line 62.64 feet; thence North 89°36' West 161.00 feet; thence North 20°07' West 67.80 feet; thence South 89°51' West 65.00 feet to the East right-of-way line of the Salt Lake and Jordan Canal; thence South 2°12' East along said East right-of-way line 123.00 feet to a fence line; thence South 89°36' East along said fence line 262.13 feet to the point of beginning.

PARCEL 3:

Commencing 459.19 feet West and 1190.83 feet North from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 86.00 feet; thence West 78.00 feet, more or less, to the East right-of-way line of the Jordan and Salt Lake Canal; thence Southeasterly along said right-of-way line 86.00 feet, more or less, to a point directly West of the point of beginning; thence East 69.00 feet, more or less, to the point of beginning.

PARCEL 4:

Beginning at a point which is West 459.19 feet and North 1190.83 feet from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 86.0 feet; thence East 187.05 feet to the West line of the Utah State Road Commission Property; thence Southeasterly along said West line 88.11 feet, more or less, to a point due East of the point of beginning; thence West 208.8 feet to the point of beginning..

PARCEL 5:

Commencing 459.19 feet West and 1104.83 feet North from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 86.0 feet; thence West 69.0 feet, more or less, to the East right of way line of Jordan and Salt Lake Canal; thence Southeasterly along said right of way line 86.0 feet, more or less, to a point

directly West of the point of beginning; thence East 65.0 feet, more or less, to the point of beginning.

PARCEL 6:

Beginning at a point which is West 459.19 feet and North 1104.83 feet from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 86.00 feet; thence East 208.80 feet to the West line of the Utah State Road Commission property; thence Southeasterly along said West line 88.11 feet, more or less; thence West 225.35 feet to the point of beginning.

PARCEL 7:

Commencing at a point on the West boundary line of a State Road 531.45 feet North and 181.0 feet West from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North along the said West boundary line 199.0 feet; thence South 89°13' West 342.87 feet; thence South 2°46' East 192.68 feet; thence East 348.46 feet to the point of beginning.

PARCEL 8:

Commencing at the point on the West boundary line of the State Road 718.9 feet North and 212.0 feet West from the Southeast corner of Section 25 Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 342.87 feet, more or less, to the East line of the Jordan and Salt Lake Canal; thence Northerly along said East line to a point 524.19 feet West from the East line of said Section 25; thence East 98.0 feet; thence South 40.0 feet; thence East 68.5 feet, more or less, to an existing pole line; thence Southeasterly along said pole line 268.0 feet, more or less; thence East 183.0 feet to the West line of said State Road; thence Southeasterly along said State Road 72.0 feet to the point of beginning.

PARCEL 9:

Beginning at a point 917.9 feet North and 226.0 feet West and 132.8 feet North from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°33'00" West 131.7 feet; thence Northerly 14.3 feet, more or less; thence West 68.5 feet; thence North 40.0 feet; thence East 192.35 feet to a State Road; thence Southeasterly along said State Road 55.78 feet to the point of beginning.

PARCEL 10:

Beginning at a point on the West side of the State access road North 917.9 feet and West 219.0 feet, more or less, from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 197.0 feet; thence South 50.4 feet; thence West 129.6 feet, more or less, to the East bank of the Jordan and Salt Lake Canal; thence along said canal North 2°46' West 414.9 feet; thence East 283.4 feet, more or less, to West side of State access road; thence Southerly 2 feet; thence West 177.1 feet; thence South 224.3 feet; thence Easterly 225.2 feet, more or less, to the West said of the State access road; thence Southerly along said access road 132.8 feet, more or less, to the point of beginning.

ALSO:

Beginning at a point on the Westerly line of the land conveyed to the State Road Commission of Utah by deed recorded August 27, 1964 as Entry No. 2023253 in Book 2229 at Page 399 of Official Records, which point is 917.9 feet North and 212 feet, more or less, Westerly from the Southeast corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°33' West 204.0 feet, more or less; thence South 50 feet; thence West 129.6 feet to the East edge of the Jordan and Salt Lake Canal; thence along said canal South 2°46' East 141.49 feet; thence North 89°13' East 342.87 feet, more or less, to the Westerly line of said State Road Commission property; thence North 05°20'18" West 189.0 feet, more or less, to the place of beginning.

PARCEL 11:

A parcel of land situate in the Southeast Quarter of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Westerly Right-of-Way of a state access road known as Pony Express Road, said point also being the on the northerly boundary line of Triview Phase 1 property (Salt Lake County Tax Parcel No. 27-36-229-003), said point being South 89°21'25" West 43.25 feet along the Section line and North 00°38'35" West 269.98 feet from the Witness Corner to the Southeast Corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said Witness Corner is South 89°21'25" West 108.65 feet from the said Southeast Corner of Section 25; and running thence West 370.07 feet along said northerly boundary line to a point on the Easterly Boundary line of the Jordan and Salt Lake Canal; thence along said Easterly Boundary line the following two (2) courses: (1) North 14°43'18" East 102.93 feet; (2) North 02°33'17" West 163.80 feet; thence East 329.81 feet to a point on the Westerly Right-of-Way of a state access road known as Pony Express Road; thence Southeasterly 264.08 feet along the arc of a 5,689.58 foot radius curve to the right (center bears South 84°01'09" West and the chord bears South 04°39'04" East 264.06 feet with a central angle of 02°39'34") along the Westerly Right-of-Way to the point of beginning.

Less and Except from the above described property those portions conveyed to Salt Lake City Corporation, a Utah municipal corporation by that certain Special Warranty Deed recorded June 22, 2021 as Entry No. 13697368 in Book 11194 at Page 5948 of Official Records.

Also:

Together with those Gap Area parcels as conveyed by that certain Quit Claim Deed recorded October 8, 2021 as Entry No. 13794482 in Book 11251 at Page 6511 of Official Records.

PARCEL 12:

The beneficial easements for access, parking, utilities and storm drainage that are contained in the Cross-Access and Parking Easement recorded September 3, 2021, as Entry No. 13764842 in Book 11234 at Page 1288 of Official Records of Salt Lake County, Utah.

PARCEL 13:

The beneficial easement for private roadway and public utilities that are contained in the Private Roadway Easement recorded October 26, 2021, as Entry No. 13807570 in Book 11259 at Page 2228 of Official Records of Salt Lake County, Utah.

THE PERIMETER BOUNDARY OF PARCELS 1 THROUGH 11 AND THE GAP AREA PARCELS OF THE ABOVE-DESCRIBED PROPERTY IS FURTHER DESCRIBED BY SURVEY AS FOLLOWS:

A parcel of land situate in the Southeast Quarter of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Westerly Right-of-Way of a state access road known as Pony Express Road, said point being South 89°21'25" West 43.25 feet along the Section line and North 00°38'35" West 269.98 feet from the Witness Corner to the Southeast Corner of Section 25, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said Witness Corner is South 89°21'25" West 108.65 feet from the said Southeast Corner of Section 25, and running;
thence West 370.07 feet to a point on the Easterly Boundary line of the Jordan and Salt Lake Canal;
thence along the Easterly Boundary line of the said Jordan and Salt Lake Canal the following (7) seven courses: (1) North 14°43'18" East 103.55 feet; (2) North 02°32'03" West 197.92 feet; (3) South 89°46'42" East 16.50 feet; (4) North 02°31'42" West 198.00 feet; (5) North 89°46'42" West 16.50 feet; (6) North 02°31'42" West 636.90 feet; (7) North 03°56'42" West 36.51 feet;
thence South 89°10'00" East 19.85 feet;
thence North 02°10'28" West 54.03 feet to a point on the Southerly Right-of-Way of 12300 South Street;
thence South 89°03'33" East 94.66 feet along the Southerly Right-of-Way of said 12300 South Street;
thence North 89°51'23" East 85.55 feet along the Southerly Right-of-Way of said 12300 South Street to a point on the Westerly Right-of-Way of a state access road known as Pony Express Road;
thence along the Westerly Right-of-Way of said state access road the following (5) five courses: (1) South 20°00'00" East 44.98 feet; (2) Southerly 95.21 feet along the arc of a 64.00 foot radius curve to the left (center bears South 66°46'57" East and the chord bears South 19°24'09" East 86.67 feet with a central angle of 85°14'23"); (3) Southerly 420.34 feet along the arc of a 1,869.86 foot radius curve to the right (center bears South 71°46'54" West and the chord bears South 11°46'42" East 419.45 feet with a central angle of 12°52'48"); (4) South 05°20'18" East 290.12 feet; (5) Southerly 399.06 feet along the arc of a 5,689.58 foot radius curve to the right (center bears South 82°39'36" West and the chord bears South 05°19'51" East 398.98 feet with a central angle of 04°01'07") to the point of beginning.