

Trust Deed Page 1 of 32

Russell Shirts Washington County Recorder  
11/21/2019 04:12:46 PM Fee \$40.00 By  
COTTONWOOD TITLE INSURANCE AGENCY,  
INC.

**When Recorded Return to:**  
Troutman Sanders LLP  
401 9th St. NW, Suite 1000  
Washington, D.C. 20004  
Attn: Kimberly J. Hargrove, Esq.

APN(s): W-5-2-13-245

CTIA#117684-WHF

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

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

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

**THIS DEED OF TRUST, ASSIGNMENT, SECURITY AGREEMENT AND FIXTURE FILING** dated November 21, 2019 (together with any amendments or modifications hereto in effect from time to time, the "**Security Instrument**"), is made by (i) RSF AV ST. GEORGE IL VII, L.P., a Texas limited partnership, having an office at 3899 Maple Avenue, Suite 250, Dallas, Texas 75219, Attn: Kurt C. Read ("**PropCo Borrower**") and (ii) SIENNA HILLS VILLAS OPERATIONS, LLC, a Utah limited liability company having an office at 25115 SW Parkway Avenue, Suite B, Portland, Oregon 97070, Attn: Lawrence Lopardo, General Counsel ("**OpCo Borrower**"). (PropCo Borrower and OpCo Borrower are collectively referred to as "**Trustor**," provided that the term "**Trustor**" shall also refer to any one or more of PropCo Borrower or OpCo Borrower) to COTTONWOOD TITLE INSURANCE AGENCY, INC., having an address of 1996 East 6400 South, Salt Lake City, Utah 84121 (together with its successors and assigns as trustees hereunder as permitted by applicable law, the "**Trustee**" and a Grantee for index purposes), as trustee, for the benefit of SUNTRUST BANK, as administrative agent and collateral agent (in such capacity, the "**Administrative Agent**") for itself as a lender and the other lenders (the "**Lenders**") from time to time party to the Loan Agreement (as defined below), having an address at SunTrust Bank, Attn: Jeff McNeill, 4777 Sharon Road, Mail Code: NC-Charlotte-0400, Charlotte, North Carolina 28210, as beneficiary.

**WITNESSETH:**

A. This Security Instrument is given to secure the loans (collectively, the "**Loan**") in the aggregate principal sum of SEVEN MILLION ONE HUNDRED SIXTY-SEVEN THOUSAND SEVEN HUNDRED FIFTY-FIVE AND NO/100 DOLLARS (\$7,167,755.00) or so much thereof as may be advanced pursuant to that certain Construction Loan Agreement dated as of the date hereof between Trustor, Administrative Agent, and Lenders (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by one or more Promissory Notes dated as of the date hereof made by Trustor to each Lender (such promissory notes, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "**Notes**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Trustor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to Administrative Agent or Lenders in respect of the Loan and the Loan Documents (the "**Debt**") and the payment and performance of all other Obligations (as defined in the Loan Agreement), as provided in Article II hereof.

C. This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Trustor of its obligations thereunder and under the other Loan Documents are secured hereby.

**NOW THEREFORE**, in consideration of the making of the Loan by each Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

**ARTICLE I  
GRANTING CLAUSES**

**Section 1.1 Property Conveyed.** For the purpose of securing payment and performance of the Obligations, including but not limited to the Debt, Trustor DOES HEREBY IRREVOCABLY AND UNCONDITIONALLY GRANT, BARGAIN, SELL, CONVEY, TRANSFER AND ASSIGN TO TRUSTEE, in trust, , with power of sale and with right of entry and possession, for the benefit of Administrative Agent acting for itself and the Lenders, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Property**").

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, be expressly made subject to the security title and lien of this Security Instrument;

(c) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements owned by Trustor now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, and remainder and remainders thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) **Equipment.** All "equipment," as such term is defined in Chapter 9a of the Uniform Commercial Code as adopted and enacted by the State of Utah (the "Uniform Commercial Code"), now owned or hereafter acquired by Trustor, that is used at or in connection with the Improvements or the Land and is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, electronic data-processing and other office equipment, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned

individually or jointly with others, and, if owned jointly, to the extent of Trustor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, china, glassware, linens, flatware, uniforms, utensils and other items of a similar nature, linens, pillows, blankets, glassware, silverware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, computers, monitors, printers, other computer equipment, wireless internet equipment, in-room internet equipment, fiber optic or other internet cable, audio visual equipment, speakers, sound systems, entertainment systems, projectors, fitness equipment, free weights, treadmills, stationary bicycles, "Stairmasters", weight machines, spa equipment, massage tables, beauty treatment supplies, hair styling equipment, saloon equipment, sun beds, medical equipment, automobiles, tractors, trailers, golf carts, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning-waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, building supplies and materials), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases (as hereinafter defined) except to the extent that Trustor shall have any right or interest therein;

(f) **Fixtures.** All Equipment now owned, or the ownership of which is hereafter acquired, by Trustor that is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Trustor shall have any right or interest therein;

(g) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, all rights to payment from Medicare or Medicaid programs or similar state or federal programs, boards, bureaus or agencies, and rights to payment from patients, residents, private insurers, and others arising from the operation of the Healthcare Center Component, receivables arising out of the use of a credit or charge card or information contained on or for use with the card, franchises, interest rate hedging agreements, and, to the extent assignable: (i) licenses, (ii) certificates and (iii) permits, and all other personal property of any kind or character whatsoever (as defined in and

subject to the provisions of the Uniform Commercial Code), whether tangible or intangible, other than Fixtures, that are now or hereafter owned by Trustor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Trustor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, superior in lien to the lien of this Security Instrument and all proceeds and products of any of the above;

(h) **Leases and Rents.** All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**") including but not limited to that certain Lease and Security Agreement dated as of November 21, 2019, between PropCo Borrower and OpCo Borrower with respect to the Land and Improvements (collectively, the "**Leases**") and all right, title and interest of Trustor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, "rents" (as defined in the Utah Act), additional rents, revenues, royalties, issues and profits, income, revenues and other benefits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt, as provided herein;

(i) **Condemnation Awards.** All awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) **Insurance Proceeds.** All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, as provided in the Loan Agreement;

(k) **Tax Certiorari.** Trustor's interest in all refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction of taxes or assessments charged against the Property, in each case, irrespective of the time period to which they relate;

(l) **Rights.** The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Administrative Agent and the Lenders in the Property;

(m) **Agreements.** To the extent assignable, and subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), all agreements, contracts, certificates,

instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right to receive and collect any sums payable to Trustor thereunder, and any and all contracts, authorizations, agreements and/or consents executed by, or on behalf of any patient or other person seeking services from Trustor pursuant to which Trustor provides or furnishes independent living and related services at the Property, including the consent to treatment and assignment of payment of benefits by third party and any and all contracts between Trustor and any resident of the Property giving the resident certain rights of occupancy in the Property and providing for certain services to such resident;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All operating, security deposit, reserve, escrow and lockbox accounts maintained by Trustor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Health-care-insurance Receivables. All health-care-insurance receivables, as such term is defined in the Uniform Commercial Code, and in any event shall include all third-party reimbursement contracts which are now or hereafter in effect with respect to residents or patients qualifying for coverage under the same, including Medicare and Medicaid, health maintenance organization, preferred provider organization, individual practice association, competitive medical plan, private insurance agreements, and any successor program or other similar reimbursement program and/or private insurance agreements, now or hereafter existing;

(q) Supporting Obligations. All supporting obligations as such term is defined in the Uniform Commercial Code, and in any event shall include, without limitation, a letter-of-credit right, secondary obligation, or obligation of a secondary obligor, or secondary obligation that supports the payment or performance of an Account, chattel paper, a document or a general intangible;

(r) Uniform Commercial Code Property. All documents, instruments, chattel paper, intangibles, and general intangibles as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property;

(s) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash, or in liquidation or other claims or otherwise; and

(t) **Other Rights.** Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by Applicable Law, Trustor expressly grants to Administrative Agent, for the benefit of itself and the Lenders, as secured party, a security interest in the portion of the Property that is or may be subject to the provisions of the Uniform Commercial Code that are applicable to secured transactions for the payment and performance of the Obligations, including but not limited to the Debt; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to herein as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and conveyed hereby.

**Section 1.2 Assignment of Rents.**

(a) Trustor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Administrative Agent, for the benefit of itself and the Lenders, all of Trustor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Trustor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not more than one (1) month prior to accrual unless deposited to an account controlled by Administrative Agent, the Rents. Trustor shall receive and hold such Rents in trust as a fund to be applied, and Trustor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property, including, without limitation, the payment of taxes and insurance, and the payment of interest, principal and other sums becoming due under the Debt, before retaining and/or disbursing any part of the Rents for any other purpose. During the existence and continuance of an Event of Default, Administrative Agent may, at its option, terminate the license herein granted to Trustor with notice to Trustor but without any other action by Administrative Agent, and all Rents subsequently collected or received by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Administrative Agent and the Lenders as security for satisfaction of the Obligations. Nothing contained in this Section 1.2, and no collection by Administrative Agent of Rents, shall be construed as imposing on Administrative Agent any of the obligations of the lessor under the Leases.

(b) Trustor shall timely perform all of its obligations under the Leases. Trustor represents and warrants that: (i) Trustor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made except pursuant to the Loan Documents.

(c) Except as expressly permitted pursuant to the terms of the Loan Agreement, Trustor shall not: (i) enter into any Lease of all or any portion of the Property; (ii) amend, modify, terminate or accept a surrender of any Lease; or (iii) collect or accept rent from any tenant of the Property for a period of more than one (1) month in advance. Any of the foregoing acts, if done, in each instance, shall be null and void.

(d) This Section 1.2 and Sections 7.2(f)(i) and (h) are 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 Utah Act and the provisions of this Section 1.2 or Section 7.2(f)(i) or (h), the provisions of the Utah Act shall control and Administrative Agent shall have all rights and remedies available under the Utah Act, which rights and remedies shall be cumulative with all rights and remedies hereunder.

**Section 1.3 Security Agreement: Fixture Filing.**

(a) This Security Instrument shall also be considered a security agreement under the Uniform Commercial Code. This Security Instrument is both a deed of trust and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Security Instrument, Trustor hereby grants to Administrative Agent, for the benefit of itself and the Lenders, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “Collateral”). Trustor hereby authorizes Administrative Agent to file financing statements, continuation statements and financing statement amendments in such form as Administrative Agent may require to perfect or continue the perfection of this security interest without the authorization or signature of Trustor. If an Event of Default shall occur and be continuing, Administrative Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Administrative Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Administrative Agent after the occurrence and during the continuance of an Event of Default, Trustor shall, at its expense, assemble the Collateral and make it available to Administrative Agent at a location (at the Land if tangible property) reasonably acceptable to Administrative Agent. Trustor shall pay to Administrative Agent on demand any and all expenses, including reasonable legal expenses and attorneys’ fees, incurred or paid by Administrative Agent in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Administrative Agent with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by Applicable Law, constitute reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by Applicable Law, be applied by Administrative Agent to the payment of the Debt and other Obligations in such priority and proportions as Administrative Agent in its discretion shall deem proper.

(b) From the date of its recording, this Security Instrument shall be effective as a “fixture filing” for the purposes of the Utah Uniform Commercial Code, as amended or recodified from time to time, with respect to all of the Property which is or is to become fixtures (within the meaning of the Uniform Commercial Code). The addresses of Trustor (Debtor) and



**Administrative Agent (Secured Party) are set forth below. This Security Instrument is to be filed for recording with the County Recorder of any county or counties where the Land (including such fixtures) is located, as a fixture filing under the Uniform Commercial Code covering such fixtures. For this purpose, the following information is set forth:**

**Name and Address of PropCo Borrower:**

**RSF AV St. GEORGE IL VII, L.P.  
c/o RSF Partners, Inc.  
3899 Maple Avenue, Suite 250  
Dallas, TX 75219  
Attn: Marisa McGaughey**

**with a copy (which shall not constitute notice) to:**

**Munsch Hardt Kopf & Harr PC  
3800 Ross Tower  
500 North Akard Street  
Dallas, TX 75201  
Attn: William T. Cavanaugh, Jr.**

**Name and Address of OpCo Borrower:**

**Sienna Hills Villas Operations, LLC  
c/o Avamere Group, LLC  
25115 SW Parkway Avenue, Suite B  
Portland, OR 97070  
Attn: Lawrence Lopardo, General Counsel**

**Name and Address of Secured Party:**

**SunTrust Bank  
CRE Loan Admin Vienna Office  
Attention: Loan Servicing  
8330 Boone Boulevard, Suite 700  
Mail Code: CS-ACW-2608  
Vienna, VA 22182**

**and**

**SunTrust Bank  
Attn: Jeff McNeill  
4777 Sharon Road  
Mail Code: NC-Charlotte-0400  
Charlotte, North Carolina 28210**

with a copy (which shall not constitute notice) to:

SunTrust Bank  
Agency Services  
Attention: Doug Wertz  
303 Peachtree Street, N.E., 25th Floor  
Mail Code GA-ATL-7662  
Atlanta, GA 30308

and with a copy (which shall not constitute notice) to:

Troutman Sanders LLP  
401 9th St. NW, Suite 1000  
Washington, D.C. 20004  
Attn: Kimberly J. Hargrove, Esq.

This document covers any portion of the Property that now is or later may become a fixture attached to the Land.

PropCo Borrower is the record owner of the Property.

**Section 1.4 Pledges of Monies Held.** Trustor hereby pledges to Administrative Agent, for the benefit of itself and the Lenders, any and all monies now or hereafter held by Administrative Agent or any Lender or on behalf of Administrative Agent or any Lender in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in the Loan Agreement), and proceeds thereof, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

#### CONDITIONS TO GRANT

**TO HAVE AND TO HOLD** the above granted and described Property unto and to the use and benefit of Administrative Agent and its successors and assigns, for the benefit of itself and the Lenders, forever;

**PROVIDED ALWAYS**, these presents are upon the express condition, that if Trustor has paid the Debt and other Obligations in full and performed all of its obligations pursuant to this Security Instrument and the other Loan Documents, and no further advances are to be made under the Loan Agreement, and upon proof of the foregoing given to the Trustee to their reasonable satisfaction, the Trustee shall (upon the receipt of the written request of Administrative Agent and at the expense of Trustor), release and discharge this Security Instrument and the liens, security interests and assignments created hereby, and Administrative Agent will provide a satisfaction and cancellation of this Security Instrument and termination statements for filed financing statements, if any, to Trustor. Trustor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 1.2 shall automatically terminate and become null and void. It is

intended by the parties hereto that this Security Instrument shall operate as a deed of trust, and not as a mortgage, under the laws of the State of Utah.

## ARTICLE II DEBT AND OBLIGATIONS SECURED

Section 2.1 Obligations. This Security Instrument and the grants, conveyances, assignments and transfers made in Article I are given for the purpose of securing the Obligations (as defined in the Loan Agreement), including, but not limited to, the Debt and the following:

- (a) the performance of all other obligations of Trustor contained herein;
- (b) the payment and performance of each other obligation of Trustor contained in the Loan Agreement and any other Loan Document;
- (c) the performance of each obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Notes, the Loan Agreement or any other Loan Document; and
- (d) the payment and performance of all Hedging Obligations owed by Trustor to any Lender or any affiliate of a Lender (other than Excluded Swap Obligations) and all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing.

Section 2.2 Future Advances. Administrative Agent or the Lenders may from time to time, pursuant to the Loan Agreement and the other Loan Documents, make optional future or additional advances ("Future Advances") to or for the benefit of Trustor, which Future Advances shall be secured by this Security Instrument, including, without limitation: (a) principal, interest, late charges, fees and other amounts which Administrative Agent or any Lender may advance pursuant to the Loan Documents; (b) all advances by Administrative Agent to or for the benefit of Trustor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Administrative Agent for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, private assessments or maintenance costs, and costs incurred by Administrative Agent for the enforcement and protection of the Property or the lien and security title of this Security Instrument; and (d) all legal fees, costs and other expenses incurred by Administrative Agent by reason of any default or otherwise in connection with the Obligations. Trustor agrees that if, at any time during the term of this Security Instrument or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Trustor fails to perform or observe any covenant or obligation under this Security Instrument including, without limitation, payment of any of the foregoing, Administrative Agent may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All such amounts advanced by Administrative Agent or the Lenders shall be added to the amount secured by this Security Instrument and the other Loan Documents (and, if advanced after the entry of a judgment of

foreclosure, by such judgment of foreclosure, as permitted by applicable law), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Loan Agreement, such interest to be calculated from the date of such advance to the date of repayment thereof.

### ARTICLE III TRUSTOR COVENANTS

Trustor covenants and agrees that throughout the term of the Loan:

**Section 3.1 Payment of Debt.** Trustor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Notes and this Security Instrument.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Notes and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Insurance.** Trustor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Trustor and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Maintenance of Property.** Trustor shall (a) cause the Property to be maintained in a good and safe condition and repair; (b) make or cause to be made, as and when necessary, all repairs, replacements and additions, whether or not insurance proceeds are available therefor; and (c) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any material part of the Property (except for normal replacement of the Fixtures, the Equipment or the Personal Property and refurbishment of the Improvements), except as expressly permitted under the terms of the Loan Agreement and the other Loan Documents. Subject to the terms of the Loan Agreement, Trustor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any condemnation. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Security Instrument. Administrative Agent, and any persons authorized by Administrative Agent, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair as provided in the Loan Agreement. In the event any such inspection reveals, in the reasonable discretion of Administrative Agent, the necessity for any repair, alteration, replacement, clean-up or maintenance, Trustor shall, at the discretion of Administrative Agent, either: (i) cause such work to be effected promptly; or (ii) promptly establish an interest bearing reserve fund with Administrative Agent in an amount determined by Administrative Agent for the purpose of effecting such work.

**Section 3.5 Waste.** Trustor shall not commit or suffer any waste of the Property or make any change in the use of the Property that will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any insurance policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security

Instrument. Trustor will not permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.6 Payment for Labor and Materials.** Trustor shall pay when due all bills for services or labor performed and materials supplied in connection with the development of the Land and the construction of the Improvements, except for bills being contested in accordance with the terms of the Loan Documents, and shall comply with the terms of Section 5.21(h) of the Loan Agreement related to the same.

**Section 3.7 Performance of Other Agreements.** Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by Trustor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8 Seisin and Warranty.** Trustor hereby warrants that (a) Trustor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters set forth in Exhibit B attached hereto (the "Permitted Encumbrances"); (b) Trustor has the right, full power and lawful authority to grant, convey and assign the same to Administrative Agent in the manner and form set forth herein; and (c) this Security Instrument creates a valid and enforceable first lien on and security title to the Property. Trustor hereby covenants that Trustor shall (a) preserve such title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Administrative Agent against all lawful claims whatsoever, subject to the Permitted Encumbrances; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Administrative Agent to protect fully the lien of this Security Instrument.

**Section 3.9 Taxes and Other Charges.** Trustor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property ("Taxes") when due, as more particularly required pursuant to Section 2.11 of the Loan Agreement.

**Section 3.10 Escrows.** If required by Administrative Agent during the existence of an Event of Default, Trustor shall pay to Administrative Agent at the time of each installment of interest due under the Loan Agreement, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of Taxes on the Property, and/or (b) the premiums which will next become due on the insurance policies required by the Loan Agreement, all in amounts as estimated by Administrative Agent, less all sums already paid therefor or deposited with Administrative Agent for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such Taxes and/or premiums, as applicable, will become due, such sums to be held by Administrative Agent to pay the same when due. If such escrow funds are not sufficient to pay such Taxes and/or insurance premiums, as applicable, as the same become due, Trustor shall pay to Administrative Agent, upon request, such additional amounts as Administrative Agent shall estimate to be sufficient to make up any deficiency. No amount paid to Administrative Agent hereunder shall be deemed to be trust funds but may be commingled with general funds of Administrative Agent and no interest shall be

payable thereon. Upon the occurrence of an Event of Default, Administrative Agent shall have the right, at its sole discretion, to apply any amounts so held against the Debt and the other Obligations, provided, however, that if (i) the Event of Default is a non-monetary Event of Default other than a failure to maintain all required insurance on the Property, (ii) all monetary obligations of Trustor under the Loan are current, and (iii) the Property is being maintained and operated in accordance with the requirements of the Loan Documents, Administrative Agent shall not apply any amounts so held unless and until the Loan is accelerated.

Section 3.11 Removal of Fixtures. Trustor shall not remove or permit to be removed from the Property any Fixtures presently or in the future owned by Trustor (unless such Fixtures have been replaced with similar Fixtures of equal or greater utility and value).

#### ARTICLE IV OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Trustor and Administrative Agent. The relationship as between Trustor and Administrative Agent is solely that of debtor and creditor, and Administrative Agent has no fiduciary or other special relationship with Trustor, and no term or condition of any of the Loan Agreement, the Notes, this Security Instrument or the other Loan Documents shall be construed so as to deem the relationship between Trustor and Administrative Agent to be other than that of debtor and creditor.

Section 4.2 No Reliance on Administrative Agent. The general partners, members, principals and (if Trustor is a trust) beneficial owners of Trustor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Trustor and Administrative Agent are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Administrative Agent's or any other Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 Limitation of Agent Obligations.

(a) Notwithstanding anything herein to the contrary, Administrative Agent is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Administrative Agent pursuant to this Security Instrument, the Loan Agreement, the Notes or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Administrative Agent shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or the effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Administrative Agent.

Section 4.4 Reliance. Trustor recognizes and acknowledges that in accepting the Loan Agreement, the Notes, this Security Instrument and the other Loan Documents, Administrative Agent and each Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Administrative Agent or any Lender; that such reliance existed on the part of Administrative Agent and each Lender prior to the date hereof, that the warranties and representations are a material inducement to Administrative Agent and each Lender in making the Loan; and that each Lender would not be willing to make its Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in the Loan Agreement.

#### ARTICLE V FURTHER ASSURANCES

Section 5.1 Recording of Security Instrument, Etc. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents conveying, creating or evidencing the security title, liens or security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the security title, liens or security interest hereof upon, and the interest of Administrative Agent in, the Property. Trustor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of any Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any Security Instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed to secure debt, deed of trust or mortgage supplemental hereto, any Security Instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Trustor will, at the cost of Trustor, and without expense to Administrative Agent or any Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, security deeds, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Administrative Agent shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Administrative Agent the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Administrative Agent, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Law. Trustor hereby irrevocably authorizes Administrative Agent, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Administrative Agent may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Trustor" or "all

personal property of Trustor” or words of similar effect, in order to perfect the security title and interests granted by Trustor under this Security Instrument. Trustor grants to Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent at law and in equity, including without limitation such rights and remedies available to Administrative Agent pursuant to this Section 5.2.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any Applicable Law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Administrative Agent’s interest in the Property, Trustor will pay the tax, with interest and penalties thereon, if any. If Administrative Agent is advised by counsel chosen by it that the payment of tax by Trustor would be unlawful or taxable to Administrative Agent or unenforceable or provide the basis for a defense of usury, then Administrative Agent shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by Applicable Law, Administrative Agent shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to any Note, this Security Instrument, or any of the other Loan Documents or shall impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Splitting of Security Instrument.** Each Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Administrative Agent, be split or divided into two or more notes, each of which shall cover all or a portion of the Debt to be more particularly described therein. To that end, Trustor, upon written request of Administrative Agent, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Administrative Agent and/or its successors or assigns permitted by the Loan Agreement, substitute notes in such principal amounts, aggregating not more than the then unpaid principal amount of the Notes, and containing terms, provisions and clauses identical to those contained in the Notes.

**ARTICLE 6  
DUE ON SALE/ENCUMBRANCE**

**Section 6.1 Reliance.** Trustor acknowledges that Administrative Agent and each Lender has examined and relied on the experience of Trustor and its general partners, managers, members, principals and beneficial owners in owning and operating properties such as the Property



in agreeing to make the Loan, and will continue to rely on Trustor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Debt and the payment and performance of the other Obligations. Trustor acknowledges that Administrative Agent and each Lender has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Administrative Agent can recover the Debt and the other Obligations by a sale of the Property for the benefit of itself and the Lenders.

**Section 6.2 No Transfer or Encumbrance.** Except as expressly permitted in the Loan Agreement, Trustor shall not permit or suffer any Transfer of the Property. Except as expressly permitted under the Loan Agreement, Trustor will not permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property, other than the Permitted Encumbrances.

## **ARTICLE VII EVENTS OF DEFAULT; REMEDIES**

**Section 7.1 Event of Default.** Each of the following shall constitute an event of default (each, an "**Event of Default**") hereunder:

- (a) An Event of Default (as defined therein) occurs under the Loan Agreement;
- (b) Trustor fails to promptly perform or comply with any of the obligations set forth in this Security Instrument, and such failure continues beyond that date which is thirty (30) days after the earlier of (i) the date on which Administrative Agent notifies Trustor of such failure or (ii) the date on which Trustor otherwise becomes aware of such failure;
- (c) A default or event of default occurs under any of the Notes or any other Loan Document other than the Loan Agreement, and such default or event of default continues beyond the expiration of the applicable grace or notice and cure period therefor, if any, set forth in such Loan Document (without duplication); or
- (d) An event of default occurs under any of the Ovation Loan Documents (as defined in the Loan Agreement);

**Section 7.2 Remedies.** If an Event of Default shall have occurred and shall be continuing, Administrative Agent may, or at the direction of the Required Lenders, shall, take any of the following actions:

- (a) **Acceleration.** Administrative Agent may declare the entire amount of the Debt immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Administrative Agent may in accordance with the Loan Agreement charge and collect interest at the Default Rate from the date of default on the unpaid balance of the Debt, at the rate set forth in the Loan Agreement.
- (b) **Possession.** To the extent permitted by Applicable Law, Administrative Agent may enter upon and take possession of the Property, with or without legal action, lease the Property,

collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as provided in the Loan Agreement: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Subject to Applicable Law, Administrative Agent is given full authority to do any act which Trustor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Security Instrument and without applying for a receiver of such rents. If, following written notice from Administrative Agent to Trustor to vacate and surrender the Property, Trustor does not vacate and surrender the Property then Trustor may be evicted by summary proceedings in accordance with applicable law.

(c) Foreclosure and Sale. Administrative Agent may cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Trustee shall give such notice of default and/or sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, and all other requirements required by Applicable Law have been satisfied, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at a public auction to be held at the time and place specified in the notice of sale (as such time of sale may be postponed pursuant to *Utah Code Annotated* § 57-1-27). Neither Trustee nor Administrative Agent shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Administrative Agent's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee and permitted by applicable law. Any person, including Trustor, Trustee or Administrative Agent, may purchase at the trustee's sale to the extent permitted by then applicable law. Administrative Agent shall have the benefit of any law permitting credit bids. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, subject to applicable law, shall be conclusive proof of their truthfulness. Any such deed shall, subject to applicable law, be conclusive against all persons as to the facts recited in it.

(d) Appointment of Receiver. Administrative Agent may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Trustor has committed waste or allowed deterioration of the Property, and Administrative Agent or any agent of Administrative Agent may be appointed as such receiver. Trustor hereby agrees that Administrative Agent has a special interest in the Property and absent the appointment of such receiver the Property may suffer waste and deterioration and Trustor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Administrative

Agent pursuant to sub-section (b) above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

(e) **Rights as a Secured Party.** Administrative Agent shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code. Administrative Agent, subject to applicable law, may elect to foreclose such of the Property as then comprise Fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Uniform Commercial Code. To the extent permitted by Applicable Law, Trustor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

(f) **Application of Sale Proceeds and Rents.**

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

ii. Administrative Agent shall apply any and all Rents collected by it in the following manner: first, to pay the portion of the Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Administrative Agent or any receiver; and, second, to pay all other Obligations in any order and proportions as Administrative Agent in its sole discretion may choose. The remainder, if any, shall be remitted to the Person or Persons entitled thereto. Administrative Agent shall have no liability for any funds which it does not actually receive.

(g) **Excess Monies.** Administrative Agent may apply on account of the Obligations any unexpended monies still retained by Administrative Agent or any Lender that were paid by Trustor to Administrative Agent or such Lender: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Trustor.

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

to warrant payment by such tenant of Rent to Administrative Agent without the necessity of further consent by Trustor. In such event, Trustor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Administrative Agent instead of to Trustor, upon receipt of written notice from Administrative Agent, without the necessity of any inquiry of Trustor and without the necessity of determining the existence or non-existence of an Event of Default. In furtherance of the foregoing, Trustor hereby appoints Administrative Agent as Trustor's attorney-in-fact with full power of substitution, which appointment shall be effective during the existence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Trustor's name or in Administrative Agent's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Administrative Agent; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases pursuant to any right of cancellation provided in such Leases or otherwise granted to Administrative Agent by any of the Loan Documents; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Administrative Agent may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied in accordance with the terms of sub-section (b), above.

(i) **Other Remedies.** Administrative Agent shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Trustor provided under the Loan Documents or by Applicable Law. Administrative Agent shall have the right, in the name and on behalf of Trustor during the continuance of an Event of Default, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Administrative Agent and Lenders in the Property. Administrative Agent shall also have the right from time to time to bring an appropriate action to recover any sums required to be paid by Trustor under the terms of this Security Instrument, as they become due, without regard to whether or not any other Obligations shall be due, and without prejudice to the right of Administrative Agent thereafter to bring an action of foreclosure, or any other action, for any default by Trustor existing at the time the earlier action was commenced. In addition, Administrative Agent and each Lender shall have the right to set-off all or any part of any amount due by Trustor to Administrative Agent or such Lender under any of the Obligations, against any indebtedness, liabilities or obligations owing by Administrative Agent or such Lender in any capacity to Trustor, including any obligation to disburse to Trustor any funds or other property on deposit with or otherwise in the possession, control or custody of Administrative Agent or such Lender.

(j) **Waiver of Trustor's Rights.** BY EXECUTION OF THIS SECURITY INSTRUMENT, TRUSTOR EXPRESSLY: (a) ACKNOWLEDGES THE RIGHT OF ADMINISTRATIVE AGENT TO ACCELERATE THE LIABILITIES SECURED BY THIS SECURITY INSTRUMENT AND THE POWER OF ATTORNEY GIVEN HEREIN TO ADMINISTRATIVE AGENT TO CAUSE TRUSTEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY TRUSTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT OR OTHER LOAN DOCUMENTS; (b) WAIVES ANY AND ALL RIGHTS WHICH TRUSTOR

MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), OR THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (i) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY ADMINISTRATIVE AGENT OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO ADMINISTRATIVE AGENT, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS SECURITY INSTRUMENT OR ANOTHER LOAN DOCUMENT AND (ii) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (c) ACKNOWLEDGES THAT TRUSTOR HAS READ THIS SECURITY INSTRUMENT AND ANY AND ALL QUESTIONS OF TRUSTOR REGARDING THE LEGAL EFFECT OF THIS SECURITY INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO TRUSTOR, AND TRUSTOR HAS CONSULTED WITH COUNSEL OF TRUSTOR'S CHOICE PRIOR TO EXECUTING THIS SECURITY INSTRUMENT; AND (d) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF TRUSTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY TRUSTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION AND THAT THIS SECURITY INSTRUMENT IS VALID AND ENFORCEABLE BY ADMINISTRATIVE AGENT AGAINST TRUSTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Administrative Agent may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Administrative Agent may deem necessary to protect the security hereof. Administrative Agent is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Obligations and shall be due and payable to Administrative Agent upon demand. All such costs and expenses incurred by Administrative Agent in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Administrative Agent that such cost or expense was incurred and continuing until the date of payment to Administrative Agent. All such costs and expenses incurred by Administrative Agent together with interest thereon at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Administrative Agent therefor.

**Section 7.4 Other Rights, Etc.** The failure of Administrative Agent to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Administrative Agent to comply with any request of Trustor or any guarantor or indemnitor with respect to the Loans to take any action to foreclose this Security Instrument or

otherwise enforce any of the provisions hereof or of the Notes or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Administrative Agent extending the time of payment or otherwise modifying or supplementing the terms of the Notes, this Security Instrument or the other Loan Documents.

It is agreed that the risk of loss or damage to the Property is on Trustor, and Administrative Agent shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Administrative Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Administrative Agent's possession.

Administrative Agent may, subject to applicable law, resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Administrative Agent in such order and manner as Administrative Agent, in its discretion, may elect. Administrative Agent may, subject to applicable law, take action to recover the Debt, or any portion thereof, or to enforce the other Obligations or any covenant hereof without prejudice to the right of Administrative Agent thereafter to foreclose this Security Instrument. The rights of Administrative Agent under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Administrative Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Administrative Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.5 Right to Release Any Portion of the Property.** Administrative Agent may, in accordance with applicable law, release any portion of the Property without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Administrative Agent for such release, and Administrative Agent may accept by assignment, pledge or otherwise any other property in place thereof as Administrative Agent may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as security title to and a security interest in the remaining portion of the Property.

## ARTICLE 8 WAIVERS

**Section 8.1 Waiver of Counterclaim.** To the extent permitted by Applicable Law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Administrative Agent arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Notes, any of the other Loan Documents, or the Obligations.

**Section 8.2 Marshalling and Other Matters.** To the extent permitted by Applicable Law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale

hereunder of the Property or any part thereof or any interest therein. Further, Trustor, for itself and all persons who may claim by, through or under Trustor, hereby expressly waives any so-called "moratorium law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "moratorium laws", and all rights of reinstatement and redemption of Trustor and of all other persons claiming by, through or under Trustor are and shall be deemed to be hereby waived to the fullest extent permitted by the laws of the State in which the Property is located.

**Section 8.3 Waiver of Notice.** To the extent permitted by Applicable Law, Trustor shall not be entitled to any notices of any nature whatsoever from Administrative Agent except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provide for the giving of notice by Administrative Agent to Trustor and except with respect to matters for which Administrative Agent is required by Applicable Law to give notice. Trustor hereby expressly waives the right to receive any notice from Administrative Agent with respect to any matter for which this Security Instrument, the Loan Agreement or any other Loan Document does not specifically and expressly provide for the giving of notice by Administrative Agent to Trustor.

**Section 8.4 Waiver of Statute of Limitations.** To the fullest extent permitted by Applicable Law, Trustor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment of the Debt or payment or performance of its other Obligations.

**Section 8.5 Additional Waivers.** TRUSTOR EXPRESSLY WAIVES THE FOLLOWING: ALL HOMESTEAD EXEMPTION RIGHTS, IF ANY, WHICH TRUSTOR MAY HAVE PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES, THE STATE OF UTAH OR ANY OTHER STATE OF THE UNITED STATES, IN AND TO THE PROPERTY AS AGAINST THE COLLECTION OF THE OBLIGATIONS, OR ANY PART THEREOF. ALL WAIVERS BY TRUSTOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY BY TRUSTOR, AFTER TRUSTOR HAS BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF TRUSTOR'S CHOICE AS TO POSSIBLE ALTERNATIVE RIGHTS. TRUSTOR'S EXECUTION OF THIS SECURITY INSTRUMENT SHALL BE CONCLUSIVE EVIDENCE OF THE MAKING OF SUCH WAIVERS AND THAT SUCH WAIVERS HAVE BEEN VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY MADE.

#### ARTICLE IX MISCELLANEOUS

**Section 9.1 Notices.** All notices and communications under this Security Instrument shall be in writing and shall be given in accordance with the terms of Section 9.1 of the Loan Agreement.

**Section 9.2 Remedies Cumulative.** The rights and remedies of Administrative Agent as provided in this Security Instrument or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred

upon Administrative Agent at law or in equity. The failure, at any one or more times, of Administrative Agent to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Security Instrument or the rights of Administrative Agent.

**Section 9.3 No Implied Waiver.** Administrative Agent shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Administrative Agent, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

**Section 9.4 No Warranty by Administrative Agent.** By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Trustor or to be given to Administrative Agent pursuant to this Security Instrument or any of the other Loan Documents, Administrative Agent shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Administrative Agent.

**Section 9.5 Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Security Instrument shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

**Section 9.6 Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Security Instrument shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall, subject to applicable law, be held to be real covenants running with the land; provided, however, that this Security Instrument cannot be assigned by Trustor without the prior written consent of Administrative Agent, and any such assignment or attempted assignment by Trustor shall be void and of no effect with respect to Administrative Agent.

**Section 9.7 Modifications.** This Security Instrument may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the Trustor and Administrative Agent, with such consent of the Lenders (if any) required by the Loan Agreement. No course of dealing or conduct by or among Administrative Agent and Trustor shall be effective to amend, modify or change any provisions of this Security Instrument or the other Loan Documents.

**Section 9.8 Commercial Loan.** Trustor represents and warrants that the loans or other financial accommodations included as Debt secured by this Security Instrument were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.



Section 9.9 Governing Law. The provisions of this Security Instrument regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Property is located. All other provisions of this Security Instrument shall be governed by the laws of the State of Georgia.

Section 9.10 Joint and Several Liability. If Trustor consists of more than one person or entity, the word "Trustor" shall mean each of them and their liability shall be joint and several.

Section 9.11 Entire Agreement. Pursuant to *Utah Code Annotated* § 25-5-4, Trustor is notified and acknowledges that the written loan documents, including this Security Instrument, represent the final agreement between the parties and may not be contradicted by evidence of any alleged prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 9.12 Trustee. Trustee, by its acceptance hereof, covenants to perform and fulfill faithfully the trusts herein created, being liable, however, only for willful misconduct or gross negligence, and hereby waives any statutory fee and agrees to accept reasonable compensation in lieu thereof for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time in accordance with *Utah Code Annotated* § 57-1-22. Administrative Agent may remove the Trustee at any time or from time to time and select a successor Trustee hereunder in accordance with *Utah Code Annotated* § 57-1-22. In the event of the death, removal, resignation, refusal to act or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Administrative Agent, without notice, without specifying any reason therefor and without applying to any court, but subject to *Utah Code Annotated* § 57-1-22, may select and appoint a successor Trustee, and all powers, rights, duties and authority of Trustee shall thereupon become vested in the successors. The substitute Trustee shall not be required to give bond for the faithful performance of its duties unless, to the extent permitted by Applicable Laws, required by Administrative Agent. Trustor shall pay the reasonable fees and expenses of Trustee for acting as Trustee under this Security Instrument, including, but not limited to, the reasonable fees and expenses of counsel employed by the Trustee. Before taking any action under this Security Instrument, Trustee may require that satisfactory indemnity be furnished to Trustee for the reimbursement of all expenses to which Trustee may be put and to protect Trustee against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from their gross negligence or willful default. Trustor, at all times, shall protect, indemnify and save harmless Trustee from and against all liabilities, losses, damages, claims, obligations, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against Trustee on account of (a) any failure of Trustor to comply with any of the terms of this Security Instrument, (b) any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Property or the use thereof, (c) any breach of any material representation or warranty of Trustor set forth herein, or (d) any action, suit, claim, demand, administrative proceeding, enforcement action or governmental or private action contesting or affecting title to the Property, or arising from or in connection with the financing, acquisition, construction, equipping, ownership, use or operation of the Property; provided, however that the foregoing indemnity shall not be applicable with respect to the gross negligence or willful misconduct of the parties to be indemnified.

**Section 9.13 Request for Notice.** Pursuant to *Utah Code Annotated* § 57-1-26(3), Trustor requests that a copy of any notice of default and a copy of any notice of sale be mailed to each Trustor at the address of such Trustor set forth in the first paragraph of this Security Instrument.

**[Remainder of Page Intentionally Left Blank]**

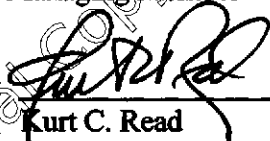
**IN WITNESS WHEREOF**, Trustor, intending to be legally bound, has duly executed and delivered this Security Instrument under seal as of the day and year first above written.

**TRUSTOR:**

**RSF AV ST. GEORGE IL VII, L.P.**,  
a Texas limited partnership

By: **RSF REIT VII AV 1 GP, LLC**,  
a Texas limited liability company  
Its: **General Partner**

By: **RSF REIT VII AV 1, LLC**  
Its: **Managing Member**

By:  (SEAL)  
**Kurt C. Read**  
Vice President

State of Texas

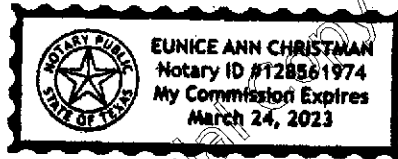
ss.

County of Dallas

On this 19 day of November, in the year 2019, before me <sup>Eunice Ann</sup>~~Christman~~, a notary public, personally appeared Kurt C. Read, the Vice President of RSF REIT VII AV 1, LLC, the Managing Member of RSF REIT VII AV 1 GP, LLC, a Texas limited liability company, the General Partner of RSF AV ST. GEORGE IL VII, L.P., a Texas limited partnership, on behalf of said limited partnership, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

  
Notary Signature



**TRUSTOR:**

**SIENNA HILLS VILLAS OPERATIONS,  
LLC, a Utah limited liability company**

By: \_\_\_\_\_ (SEAL)  
K. Rickard Miller, Jr.  
Manager

State of ~~Utah~~ Oregon  
County of CLATSOP ss.

On this 15 day of November, in the year 2019, before me Lawrence Lopardo a notary public, personally appeared K. Rickard Miller, Jr., the Manager of SIENNA HILLS VILLAS OPERATIONS, LLC, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

\_\_\_\_\_  
Notary Signature



**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

All that lot or parcel of land situated in the County of Washington, State of Utah, and more particularly described as follows:

**PARCEL 1:**

Beginning at a point which is North 00°54'18" East 2212.95 feet along the center section line and North 90°00'00" East 395.90 feet from the South quarter corner of Section 13, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being a point on the Easterly right-of-way of Washington Parkway, recorded on July 5, 2006 as Document No. 20060029317 in the office of the Washington County Recorder, in said County, State of Utah and running thence along said Easterly Washington Parkway right-of-way North 04°36'52" West 267.62 feet to the point of curvature of a 25.00 foot radius curve concave to the right, said point also being a point on the Southerly right-of-way of Red Stone Road; thence along said Southerly right-of-way of Red Stone Road the following (3) three courses: Northeasterly 39.27 feet along the arc of said curve through a central angle of 89°59'59" to the point of tangency; thence North 85°23'06" East 309.67 feet to the point of curvature of a 235.00 foot radius curve concave to the left; thence Northeasterly 110.74 feet along the arc of said curve through a central angle of 26°59'55" to point of non-tangency; thence South 05°34'26" East 317.84 feet to a point on the arc of a 1786.48 foot radius curve concave to the right, the radius point of which bears North 05°51'45" West, said point also being on the Northerly right-of-way of Telegraph Road Phase II recorded on January 8, 2001 as Entry No. 706703 in Book 1391 at Page 247, in the office of the Washington County Recorder, in said County, State of Utah; thence along said Northerly right-of-way of Telegraph Road Phase II the following (2) two courses: Southwesterly 38.84 feet along the arc of said curve through a central angle of 01°14'45" to the point of tangency; thence South 85°23'00" West 407.83 feet to the point of beginning.

**PARCEL 2:**

The nonexclusive easements, appurtenant to Parcel 1 described herein, provided for in that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Sienna Hills recorded January 27, 2006 as Entry No. 999848 in Book 1838 at Page 798, as amended by that certain First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Sienna Hills recorded March 8, 2010 as Entry No. 20100007553, and as amended, supplemented and/or otherwise affected by that certain Tract Declaration of Covenants, Conditions and Restrictions, dated June 12, 2019 and recorded June 28, 2019 as Entry No. 20190025529 among the official records of Washington County, Utah.

**FOR INFORMATIONAL PURPOSES ONLY:**

**ADDRESS:** 154 N. Red Stone Road, Units 1-25, Washington, UT 84780

**TAX PARCEL NO:** W-5-2-13-245

(End of Property Description)

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

1. General property taxes were not assessed against the land for the year 2019 because of ownership by a tax exempt entity. The land is subject to an Appendix Roll Tax from the time of transfer into a non-exempt entity for the remainder of the taxing year under Parcel No. W-5-2-13-245 none due and payable.

2. The herein described Land is located within the boundaries of Washington City, The Washington County Water Conservancy District, Ash Creek Special Service District, Washington County Special Service District No. 1, Southwest Mosquito Abatement and Control District, Washington County Flood Control, and is subject to any and all charges and assessments levied thereunder.

NOTE: As of the effective date of this policy, said charges and assessments are paid current.

3. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

4. Claim, right, title or interest to water or water rights whether or not shown by the public records.

5. Public utilities easements as shown on the Record of Survey for Parcel 14B of the Sienna Hills Development, filed in the office of the Washington County Surveyor on November 14, 2008 as No. 4992-08.

As shown on ALTA/NSPS Land Title Survey prepared by Roger M. Bundy, PLS No. 7654 of R & B Surveying dated September 17, 2019, last revised November 18, 2019.

6. Entry Feature Easement in favor of Sienna Hills Community Association for the purpose of the construction, access, maintenance, and repair of Entry Features and incidental purposes, by instrument dated October 26, 2017 and recorded October 27, 2017, as Entry No. 20170043410.

As shown on ALTA/NSPS Land Title Survey prepared by Roger M. Bundy, PLS No. 7654 of R & B Surveying dated September 17, 2019, last revised November 18, 2019.

7. Easement in favor of the City of Washington, a Utah municipal corporation for the use, operation, installation, maintenance, replacement and repair of improvements associated with a public sewer system and incidental purposes, by instrument dated January 19, 2018 and recorded January 19, 2018, as Entry No. 20180002872.

As shown on ALTA/NSPS Land Title Survey prepared by Roger M. Bundy, PLS No. 7654 of R & B Surveying dated September 17, 2019, last revised November 18, 2019.

8. Reservations and exceptions as contained in Patent No. 1167304 from the United States of America, recorded December 18, 1956 as Entry No. 102651 in Book S-10 at Page 145, official Washington County Records.

Rights of revision set forth in said Patent have expired on their own terms.

9. The reservations, exceptions and easements as set forth in State of Utah Patent No. 20621, recorded June 28, 2019 as Entry No. 20190025528, official Washington County Records.

10. Notice, dated September 27, 1988 and recorded September 30, 1988 as Entry No. 338481 in Book 499 at Page 504.

Indemnification by Washington County, a Utah Municipal Corporation, dated September 27, 1988 and recorded February 15, 1990 as Entry No. 360728 in Book 550 at Page 415.

11. United States Department of the Interior Bureau of Land Management Utah Clear List No. 18, recorded January 18, 1989 as Entry No. 343020 in Book 509 at Page 778.

12. Development Agreement by and between Washington City, a Utah municipal corporation and the State of Utah, School and Institutional Trust Lands Administration, an independent agency of the State of Utah, dated September 28, 2005 and recorded November 17, 2005 as Entry No. 985651 in Book 1815 at Page 165.

13. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Sienna Hills recorded January 27, 2006 as Entry No. 999848 in Book 1838 at Page 798, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.

Amended March 8, 2010 as Entry No. 20100007553.

**Tract Declaration of Covenants, Conditions and Restrictions, dated June 12, 2019 and recorded June 28, 2019 as Entry No. 20190025529.**

**14. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in that certain Declaration of Covenants Regarding Development recorded June 28, 2019 as Entry No. 20190025530, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.**

**15. Storm Water Management BMP Maintenance Agreement by Sienna Hills Properties, LLC, recorded August 9, 2019 as Entry No. 20190031728.**

**16. Subject to the following matters disclosed on that certain survey prepared by R & B Surveying, having been certified under the date of September 17, 2019, last revised November 18, 2019, as Job No. Not Disclosed, by Roger M. Bundy, a Professional Land Surveyor holding License No. 7654:**

- a. Electric boxes in Northwest portion appear to bisect property line
- b. Gas line per blue stakes along Westerly portion
- c. Century Link line per blue stakes along Westerly portion
- d. Fiber optic line per blue stakes along Westerly portion
- e. CATV line per blue stakes along Westerly portion
- f. Underground electric line per blue stakes along Westerly portion
- g. 10-foot Public Utility and Drainage Easement along the Southerly, Westerly and Northerly boundary lines
- h. 20-foot side yard setback (0 feet if approved by planning commission conditional use approval) (per PCD Zoning-current zone).

**17. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records, except as insured by the hereto and future CLTA 122-06 endorsements.**