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Carri R. Jeffries, Iron County Recorder - Page 1 of 33
10/04/2019 02:15:06 PM By: COTTONWOOD TITLE INSURANCE AGENCY,
INC.

This instrument was prepared by, and after recording
return to:

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Atlanta, GA 30308
Attn: Patricia Luna, Esq.

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B-1196-0042-0000

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

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This MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Security Instrument") dated as of October 4, 2019, is executed by NORTHWEST SANDSTONE LLC, an Idaho limited liability company, as grantor ("Borrower"), to Cottonwood Title Insurance Agency, Inc., a Utah corporation, as trustee, in favor of BOSTON CAPITAL INTERMEDIATE TERM INCOME FUND II LLC, a Massachusetts limited liability company, as beneficiary ("Lender").

This Security Instrument covers property or goods herein described that are, or are to become so affixed to real property described in Exhibit A hereto so as to become fixtures and also constitutes a fixture filing, and is to be filed in the real estate records. The names of the debtor (the "Borrower" herein) and the secured party (the "Lender" herein), the mailing address of the secured party from which information concerning the security interest may be obtained, the mailing address of the debtor, and a statement indicating the types, or describing the items of collateral are stated herein in compliance with the UCC.

Borrower, in consideration of (i) the loan in the original principal amount of \$7,400,000.00 (the "Mortgage Loan") evidenced by that certain Multifamily Note dated as of the date of this Security Instrument, executed by Borrower and made payable to the order of Lender (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Note"), and (ii) that certain Loan and Security Agreement dated as of the date of this Security Instrument, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), and to secure to Lender the repayment of the Indebtedness (as defined in this Security Instrument), and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined in the Loan Agreement), excluding the Environmental Indemnity Agreement (as defined in this Security Instrument), irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale and right of entry and possession, the Mortgaged Property (as defined in this Security Instrument), including the real property located in Iron County, State of Utah, and described in Exhibit A attached to this Security Instrument and incorporated by reference (the "Land"), to have and to hold such Mortgaged Property unto Lender and Lender's successors and assigns, forever; Borrower hereby releasing, relinquishing and waiving to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction (as defined in this Security Instrument), if applicable.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Mortgaged Property, and that the Mortgaged Property is not encumbered by any Lien (as defined in this Security Instrument) other than Permitted Encumbrances (as defined in this Security Instrument). Borrower covenants that Borrower will warrant and defend the title to the Mortgaged Property against all claims and demands other than Permitted Encumbrances.

Borrower and Lender covenant and agree as follows:

1. Defined Terms.

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. All terms used and not specifically defined herein, but which are otherwise defined by the UCC, shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

“Awards” means any and all awards, payments, refunds or proceeds including interest thereon, and the right to receive the same, which may be made with respect to the Land, Improvements, Fixtures or Personalty or any other part of the Mortgaged Property as a result of (a) the alteration of the grade of any street, or (b) any other injury to or decrease in the value of the Land, Improvements, Fixtures or Personalty or any other part of the Mortgaged Property, to the extent of all amounts which may be secured hereby at the date of receipt of any such award, payment or proceeds by Lender, and of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award, payment or proceeds.

“Borrower Agreement” means the First Amended and Restated Operating Agreement of Borrower.

“Capital Contributions” means all of Borrower’s right, title and interest in all Capital Contributions with respect to the participation of the Equity Investor to be made pursuant to the terms and conditions of the Borrower Agreement.

“Cash” means all proceeds from the conversion, voluntary or involuntary, of any of the Insurance Proceeds, Condemnation Proceeds or Sale Contracts into cash or liquidated claims, and the right to collect such proceeds.

“Code” means the Internal Revenue Code of 1986, as amended.

“Condemnation Action” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“Condemnation Proceeds” means all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.

“Construction Agreements” means, without limiting the definition of “Development Rights” below, all of the Borrower’s rights, options, powers and privileges in and to (but not the Borrower’s obligations and burdens under) any construction contract, architectural and engineering agreements and management contract pertaining to construction, development, repair, operation, ownership, equipping and management of the Mortgaged Property and all of the Borrower’s right, title and interest in and to (but not the Borrower’s obligations and burdens under) all architectural, engineering and similar plans, specifications, drawings, reports, surveys, plans, permits and the like, contracts for construction, development, repair, operation, management and maintenance of or provisions of services to, the Mortgaged Property or any of the other property described herein, and all sewer taps and allocations, agreements for utilities, bonds and the like, all relating to the Mortgaged Property.

“Development Rights” means all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

“Earnings” means all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents.

“Enforcement Costs” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or Event of Default) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement dated as of the date of this Security Instrument, executed by Borrower to and for the benefit of

Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“Environmental Laws” has the meaning set forth in the Environmental Indemnity Agreement.

“Equity Investor” means Wincopin Circle, LLLP, a Maryland limited liability limited partnership, and its successors and assigns.

“Escrow Funds” means the interest of the Borrower in and to any cash escrow funds and in and to any and all funds, securities, instruments, documents and other property which are any time paid to, deposited with, under the control of, or in the possession of the Lender, or any of set-off or right of lien that the Lender may otherwise enjoy under applicable law, regardless of whether the same arose out of or relate in any way, whether directly or indirectly, to the Mortgaged Property.

“Event of Default” has the meaning set forth in the Loan Agreement.

“Fixtures” means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

“Goods” means all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment;

supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“Imposition Deposits” means all amounts deposited by Borrower with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (a) any water and sewer charges, if any, which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (b) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require, (c) all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority and which, if not paid, will become a lien, on the Land or the Improvements, and (d) amounts for other charges and expenses, which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably estimated from time to time by Lender, plus one-sixth of such estimate.

“Impositions” means

- (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property;
- (b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under the Loan Agreement;
- (c) Taxes; and
- (d) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably determined from time to time by Lender.

“Improvements” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

“Indebtedness” means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument or any other Loan Document (other than the Environmental Indemnity Agreement and Guaranty), including late charges, default interest,

and accrued interest as provided in the Loan Agreement and this Security Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Mortgaged Property or the security of this Security Instrument, all other monetary obligations of Borrower under the Loan Documents (other than the Environmental Indemnity Agreement), including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

“Insurance Proceeds” means all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement.

“Land” means the real property described in Exhibit A.

“Leases” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants (“Rents”) and all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

“Lien” means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman’s or mechanic’s lien, or any lien of a Governmental Authority, including any lien in connection with the payment of utilities, or any other encumbrance.

“Mortgaged Property” means all of Borrower’s present and hereafter acquired right, title and interest in and to all of the following:

- (a) the Land;
- (b) the Improvements;
- (c) the Fixtures;
- (d) the Personalty;
- (e) the Development Rights;
- (f) the Insurance Proceeds;
- (g) the Condemnation Proceeds and Awards;

- (h) the Construction Agreements;
- (i) the Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;
- (j) the Earnings;
- (k) the Imposition Deposits;
- (l) the Refunds;
- (m) the Security Deposits;
- (n) the Trademarks;
- (o) the Cash;
- (p) the Tax Credits;
- (q) the Replacement Reserves;
- (r) the Capital Contributions;
- (s) the Escrow Funds; and
- (t) the Awards.

“Permitted Encumbrance” means only the easements or restrictions listed in a schedule of exceptions to coverage in the Title Policy and Taxes for the current tax year that are not yet due and payable.

“Personalty” means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

“Person” means any entity, whether an individual, trustee, corporation, partnership, limited liability company, trust, unincorporated organization, governmental or quasi-governmental

agency, board, bureau, commission, department, court, administrative tribunal or other instrumentality or authority, and public utility.

“Property Jurisdiction” means the jurisdiction in which the Land is located.

“Refunds” means all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated).

“Replacement Reserves” means all deposits, escrow accounts, replacement reserve accounts or other monies now or hereafter in possession of Lender or payable by or to Borrower.

“Sale Contracts” means all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.

“Security Deposits” means all tenant security deposits which have not been forfeited by any tenant under any Lease.

“Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

“Tax Credits” means all of Borrower’s title and interest in any low income housing tax credit allocations issued to Borrower pursuant to Section 42 of the Code, to the extent permitted by law.

“Taxes” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

“Title Policy” has the meaning set forth in the Loan Agreement.

“Trademarks” means all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

“UCC” means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

"UCC Collateral" means any or all of that portion of the Mortgaged Property, whether acquired now or in the future, in which a security interest may be granted under the UCC.

2. **Security Agreement; Fixture Filing.**

(a) To secure to Lender, the repayment of the Indebtedness, and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower hereby pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral. This Security Instrument constitutes a security agreement and a financing statement under the UCC. This Security Instrument also constitutes a financing statement pursuant to the terms of the UCC with respect to any part of the Mortgaged Property that is or may become a Fixture under applicable law, and will be recorded as a "fixture filing" in accordance with the UCC. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the signature of Borrower. From and after the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the UCC, in addition to all remedies provided by this Security Instrument existing under applicable law. Lender may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lender's other remedies. For purposes of the UCC, the debtor is Borrower and the secured party is Lender. The name and address of the debtor and secured party are set forth after Borrower's signature below which are the addresses from which information on the security interest may be obtained.

(b) Borrower represents and warrants that: (1) Borrower maintains its chief executive office at the location set forth after Borrower's signature below, and Borrower will notify Lender in writing of any change in its chief executive office within thirty (30) days of such change; (2) Borrower is the record owner of the Mortgaged Property; (3) Borrower's state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Security Instrument; (4) Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (5) Borrower's organizational identification number, if applicable, is as set forth after Borrower's signature below; (6) Borrower is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; (7) the UCC Collateral will not be removed from the Mortgaged Property without the consent of Lender; and (8) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto.

(c) All property of every kind acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and

record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

3. Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Leases and Rents. It is the intention of Borrower to establish present, absolute and irrevocable transfers and assignments to Lender of all Leases and Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Borrower and Lender intend the assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Mortgaged Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Mortgaged Property, and it is the intention of Borrower, in such circumstance, that this Security Instrument create and perfect a lien on each of the Leases and Rents in favor of Lender, which liens shall be effective as of the date of this Security Instrument.

(b) Until the occurrence of an Event of Default, but subject to the limitations set forth in the Loan Documents, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay the monthly debt service payments and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument.

(c) From and after the occurrence of an Event of Default, without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Borrower pursuant to Section 3(b) shall automatically terminate, and Lender and Trustee shall immediately have all rights, powers and authority granted to Borrower under any Lease (including the right, power and authority to

modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. From and after the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time from and after the occurrence of an Event of Default, Lender or Trustee may make demand for all Rents, and Lender or Trustee may give, and Borrower hereby irrevocably authorizes Lender and Trustee to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender or Trustee shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit.

(d) From and after the occurrence of an Event of Default, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Borrower and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Lender's election), the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing this assignment of Rents, protecting the Mortgaged Property or the security of this Security Instrument and the Mortgage Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

(e) Notwithstanding any other right provided Lender under this Security Instrument or any other Loan Document, if an Event of Default has occurred, and regardless of the adequacy of Lender's security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in Section 3. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Mortgaged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender's entry upon and taking possession and control of the Mortgaged Property, possession of the Mortgaged Property and all documents, records (including records on electronic or magnetic

media), accounts, surveys, plans, and specifications relating to the Mortgaged Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable. If Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property.

(f) The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section 3 shall not at any time or in any event obligate Lender to take any action under any Loan Document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Mortgaged Property, except to the extent arising from Lender's gross negligence or willful misconduct after Lender's having taken possession of and/or has excluded Borrower from the Mortgaged Property. Prior to Lender's actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

- (1) obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);
- (2) obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property; or
- (3) responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property.

The execution of this Security Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking possession and control by Lender of the Land and Improvements.

(g) Lender shall be liable to account only to Borrower and only for Rents actually received by Lender. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except to the extent arising from Lender's gross negligence or willful misconduct after Lender's having taken possession of and/or has excluded Borrower from the Mortgaged Property. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Mortgaged Property by Lender or the receiver, and any application of Rents as provided in this Security Instrument, shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Security Instrument or any Loan Document.

4. Protection of Lender's Security.

If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or any action or proceeding is commenced that purports to affect the Mortgaged Property, Lender's security, rights or interests under this Security Instrument or any Loan Document (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a debtor or decedent), Lender may, at its option, make such appearances, disburse or pay such sums and take such actions, whether before or after an Event of Default or whether directly or to any receiver for the Mortgaged Property, as Lender reasonably deems necessary to perform such obligations of Borrower and to protect the Mortgaged Property or Lender's security, rights or interests in the Mortgaged Property or the Mortgage Loan, including:

- (a) paying fees and out-of-pocket reasonable expenses of attorneys, accountants, inspectors and consultants;
- (b) entering upon the Mortgaged Property to make repairs or secure the Mortgaged Property;
- (c) obtaining (or force-placing) the insurance required by the Loan Documents; and
- (d) paying any amounts required under any of the Loan Documents that Borrower has failed to pay.

Any amounts so disbursed or paid by Lender shall be added to, and become part of, the principal balance of the Indebtedness, be immediately due and payable and bear interest at the Default Rate from the date of disbursement until fully paid. The provisions of this Section 4 shall not be deemed to obligate or require Lender to incur any expense or take any action.

5. No Other Indebtedness and Mezzanine Financing.

Other than the Mortgage Loan and the Subordinate Financing (as defined in the Loan Agreement), Borrower shall not incur or be obligated at any time with respect to any loan or other indebtedness in connection with or secured by the Mortgaged Property. Neither Borrower nor any owner of Borrower shall (a) incur any "mezzanine debt," secured or unsecured, or issue any preferred equity that is secured by a pledge of the ownership interests in Borrower or by a pledge of the cash flows of Borrower to the extent the Transfer of the underlying ownership interests is otherwise prohibited by the Loan Agreement, or (b) incur any similar Indebtedness or equity with respect to the Mortgaged Property or ownership interest in Borrower or any owner of Guarantor that is secured by a pledge of the cash flows of Borrower to the extent the Transfer of the underlying ownership interests is otherwise prohibited by the Loan Agreement.

6. Default; Acceleration; Remedies.

(a) From and after the occurrence of an Event of Default, Lender, at its option, may declare the Indebtedness to be immediately due and payable without further demand, and may either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Mortgage Loan; (2) to foreclose this Security Instrument judicially or non-judicially by the STATUTORY POWER OF SALE granted herein; (3) to enforce or exercise any right under any Loan Document; and (4) to pursue any one (1) or more other remedies provided in this Security Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Security Instrument or any other Loan Document is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Borrower has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Borrower to acceleration and sale.

(b) Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised or directed by Lender without prior judicial hearing. In the event Lender invokes the power of sale:

(1) Lender shall send to Borrower and any other Persons required to receive such notice, written notice of Lender's election to cause the Mortgaged Property to be sold. Borrower hereby authorizes and empowers Lender to take possession of the Mortgaged Property, or any part thereof, and hereby grants to Lender a power of sale and authorizes and empowers Lender to sell (or, in the case of the default of any purchaser, to resell) the Mortgaged Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale;

(2) Lender without demand on Borrower shall sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale at public auction to the highest bidder. Lender shall have the authority to determine the terms of the sale. In connection with any such sale, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times. Lender shall have the right to become the purchaser at any such sale. Lender shall be entitled to receive fees and expenses from such sale not to exceed the amount permitted by applicable law;

(3) within a reasonable time after the sale, Lender shall deliver to the purchaser of the Mortgaged Property a deed or such other appropriate conveyance document conveying the Mortgaged Property so sold without any express or implied

covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and

(4) the outstanding principal amount of the Mortgage Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. If the Mortgaged Property is sold for an amount less than the amount outstanding under the Indebtedness, the deficiency shall be determined by the purchase price at the sale or sales. Borrower waives all rights, claims, and defenses with respect to Lender's ability to obtain a deficiency judgment.

(c) Lender shall apply the proceeds of any sale in the following order:

(1) to all costs and expenses of the sale, including attorneys' fees and costs of title evidence;

(2) to the Indebtedness in such order as Lender, in Lender's discretion, directs;

and
(3) the excess, if any, to the person or persons legally entitled to the excess.

(d) In connection with the exercise of Lender's rights and remedies under this Security Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: (1) all expenditures and expenses authorized by applicable law and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (2) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender's rights and remedies under the Loan Documents; and (3) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender's rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Mortgaged Property to bidders at any sale which may be held in connection with the exercise of Lender's rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section 6, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, the Note, the other Loan Documents, or the Mortgaged Property, including bankruptcy proceedings, any Event of Default, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or

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otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(e) Any action taken by Lender pursuant to the provisions of this Section 6 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 6, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession) a receiver appointed pursuant to the provisions of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law to the full extent permitted by law.

7. Waiver of Statute of Limitations and Marshaling.

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

8. Waiver of Redemption; Rights of Tenants.

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

(1) Borrower for itself and all Persons who may claim by, through, or under Borrower, hereby expressly waives any so-called "Moratorium Law" and any and all

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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, including equity of redemption, of Borrower and of all other Persons claiming by, through, or under Borrower are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law, including any right of redemption granted by applicable law;

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

(3) if Borrower is a trust, Borrower represents that the provisions of this Section 8 (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

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

9. Notice.

(a) All notices under this Security Instrument shall be:

(1) in writing, and shall be (A) delivered, in person, (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested, or (C) sent by overnight express courier;

(2) addressed to the intended recipient at its respective address set forth at the end of this Security Instrument; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

(b) Any party to this Security Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 9.

(c) Any required notice under this Security Instrument which does not specify how notices are to be given shall be given in accordance with this Section 9.

(d) Lender agrees that effective notice to Borrower under this Security Instrument and the Loan Documents shall require delivery of a copy of such notice to the Equity Investor. Such notice shall be given in the manner provided in this Section, at the Equity Investor's address set forth below:

Wincopin Circle LLEP
c/o Enterprise Community
Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Telephone: (410) 964-0552
Facsimile: (410) 772-2630
Attention: Asset Management

With a copy to:
Email: sshack@enterprisecommunity.com
Attn: General Counsel

With a copy to:

Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 727-7702
Facsimile: (410) 468-2786

10. Mortgagee-in-Possession.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Security Instrument shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

11. Release.

Upon payment in full of the Indebtedness, Lender or Trustee, at Lender's direction shall cause the release of this Security Instrument and Borrower shall pay Lender's and Trustee's costs incurred in connection with such release..

12. Acceptance of Trust; Powers and Duties of Trustee. Trustee accepts this trust when this Deed of Trust is executed. From time to time, upon written request of Lender and, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Secured Obligations, Lender, or Trustee at Lender's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Subject Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Trustee or Lender may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Borrower, Lender or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

13. Compensation; Exculpation; Indemnification.

(a) Borrower shall pay all Trustee's fees and reimburse Trustee for all expenses in the administration of this trust, including reasonable attorneys' fees and fees for accountings and restatement quotes as may be required by Utah Code Annotated § 57-1-31.5. Borrower shall pay Lender reasonable compensation for services rendered concerning this Deed of Trust, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Lender in this Deed of Trust; (ii) the failure or refusal of Lender to perform or discharge any obligation or liability of Borrower under this Deed of Trust or any Lease or other agreement related to the Subject

Property; or (iii) any loss sustained by Borrower or any third party as a result of Lender's failure to lease the Subject Property after any Default or from any other act or omission of Lender in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Lender; and no such liability shall be asserted or enforced against Lender, and all such liability is hereby expressly waived and released by Borrower.

(b) Except to the extent that any of the following Claims occur as a result of the gross negligence or willful misconduct of Lender or its affiliates, employees or representatives, as determined by a court of competent jurisdiction pursuant to a final non-appealable court order, Borrower shall indemnify Trustee and Lender against, and hold them harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses (collectively, the "Claims") which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Borrower to perform Borrower's obligations; or (iv) by reason of any alleged obligation or undertaking of Lender to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Borrower under this Deed of Trust. Borrower's duty to indemnify Trustee and Lender shall survive the payment, discharge or cancellation of the Secured Obligations and the release or reconveyance, in whole or in part, of this Deed of Trust.

(c) Borrower shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Lender, together with interest thereon from the date such indebtedness arises at the highest rate per annum payable under any Secured Obligation. Lender may, at its option, add any such indebtedness to any Secured Obligation.

14. Substitution of Trustees. From time to time, by a writing signed and acknowledged by Lender and recorded in the Office of the Recorder of each County in which the Subject Property is situated, Lender may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth the recordation date and any recording or other information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new Trustee.

15. Property and Liability Insurance.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards,

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and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(a) All premiums on insurance policies required under Section 15(a) shall be paid in the manner provided in Schedule 4.3 to the Loan Agreement, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 15(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(b) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(c) All insurance policies and renewals of insurance policies required by this Section 15 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(d) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(e) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney in fact for Borrower to make proof of loss in excess of \$25,000, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 15 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(f) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) three (3) months before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (4) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 15.

(g) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

16. Condemnation.

(a) Borrower shall promptly notify Lender of any Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 16 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Schedule 4.3 of the Loan Agreement or any other Loan Document, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

(c) Lender shall not exercise its option to apply condemnation proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice of the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) three (3) months before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (4) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Security Instrument.

17. Governing Law, Consent to Jurisdiction and Venue.

This Security Instrument shall be governed by the laws of the Property Jurisdiction without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Borrower agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

18. Miscellaneous Provisions.

(a) This Security Instrument shall bind, and the rights granted by this Security Instrument shall benefit, the successors and assigns of Lender. This Security Instrument shall bind, and the obligations granted by this Security Instrument shall inure to, any permitted successors and assigns of Borrower under the Loan Agreement. If more than one (1) person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several. The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower. No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

(b) The invalidity or unenforceability of any provision of this Security Instrument or any other Loan Document shall not affect the validity or enforceability of any other provision of this Security Instrument or of any other Loan Document, all of which shall remain in full force and effect. This Security Instrument contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Security

Instrument. This Security Instrument may not be amended or modified except by written agreement signed by the parties hereto.

(c) The following rules of construction shall apply to this Security Instrument:

(1) The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument.

(2) Any reference in this Security Instrument to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Security Instrument or to a Section or Article of this Security Instrument.

(3) Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(4) Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular.

(5) As used in this Security Instrument, the term "including" means "including, but not limited to" or "including, without limitation," and is for example only, and not a limitation.

(6) Whenever Borrower's knowledge is implicated in this Security Instrument or the phrase "to Borrower's knowledge" or a similar phrase is used in this Security Instrument, Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower's knowledge after reasonable and diligent inquiry and investigation.

(7) Unless otherwise provided in this Security Instrument, if Lender's approval is required for any matter hereunder, such approval may be granted or withheld in Lender's reasonable discretion.

(8) Unless otherwise provided in this Security Instrument, if Lender's designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender's reasonable discretion.

(9) All references in this Security Instrument to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(10) "Lender may" shall mean at Lender's discretion, but shall not be an obligation.

19. Extended Low-Income Housing Commitment.

Lender agrees that the lien of this Security Instrument shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Code) (the “Extended Use Agreement”) recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Security Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Code. Notwithstanding the foregoing, Lender acknowledges that its lien established hereby is subject to the provisions of Section 42(h)(6)(E)(ii) of the Code.

20. Cross-Default.

Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Security Instrument and that any costs, damages or other amounts, including reasonable attorney’s fees incurred by the Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default, under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Security Instrument.

21. Construction Mortgage.

The Mortgage constitutes a “construction mortgage” as defined in Section 9-334(h) of the Uniform Commercial Code and secures an obligation incurred for the construction of improvements on the Property, including the acquisition cost of the Property.

22. Future Advances.

All future advances under the Note, this Security Instrument and any other loan or security documents shall have the same priority as if the future advance was made on the date that this Security Instrument was recorded. This Security Instrument shall secure all indebtedness of Borrower, its successors and assigns under the Note and this Security Instrument or any of the other loan documents, whenever incurred. Notice is hereby given that the indebtedness secured hereby may increase as a result of any defaults hereunder by Borrower due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes or insurance premiums which Lender elects to advance, defaults under leases that Lender elects to cure, attorney fees or costs incurred in enforcing the Instrument or other documents or other expenses incurred by Lender in protecting the Mortgage Property, the security of this Security Instrument or Lender’s rights and interests.

23. Removal of Manager.

Notwithstanding anything to the contrary contained in the Loan Documents, the removal of Borrower's managing member for cause and the replacement thereof with an affiliate of Equity Investor in accordance with the terms of the Borrower Agreement shall not require the consent of Lender and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If the Equity Investor exercises its right to replace a removed managing member with an entity other than an affiliate of Equity Investor, Lender shall not unreasonably withhold its consent to the substitute managing member. Notwithstanding the foregoing, the substitute manager shall assume all of the rights and obligations of the removed manager under all of the Loan Documents.

24. Assignment of Investor Interests.

Notwithstanding anything to the contrary contained in the Loan Documents, the respective interests of the Equity Investor shall be transferable to any affiliate of Wincopin Circle LLLP, including, but not limited to, American Express Utah Equity Fund III LLLP, without the consent of Lender. The respective interests of Equity Investor shall be transferable to a non-affiliate of Wincopin Circle LLLP, with the consent of Lender, which consent shall not be unreasonably withheld.

25. Time is of the Essence

Borrower agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other Loan Documents, time is of the essence.

26. WAIVER OF TRIAL BY JURY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH OF BORROWER AND LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS. The following Exhibit is attached to this Security Instrument and incorporated fully herein by reference:

Exhibit A Description of the Land (required)

[Remainder of Page Intentionally Blank]


IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument under seal (where applicable) or has caused this Security Instrument to be signed and delivered by its duly authorized representative under seal (where applicable). Where applicable law so provides, Borrower intends that this Security Instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

NORTHWEST SANDSTONE LLC, an Idaho limited liability company

By: The Sandstone Manager LLC, an Idaho limited liability company, its Managing Member

By: Northwest Real Estate Capital Corp., an Idaho nonprofit corporation, its Sole Member

**By: 
Name: Julie Marple
Title: Vice President**

Notice Address:

**Northwest Sandstone LLC
210 W. Mallard Drive, Suite A
Boise, Idaho 83706
Telephone: 208-375-9407
Fax: 208-375-9158
Attention: Julie Marple**

**Brad Britzmann, Esq.
Roseblum Goldenhersh, P.C.
7733 Forsyth Boulevard, Suite 400
St. Louis, MO 63105-1812
Telephone: 314-854-0427**

STATE OF Idaho
COUNTY OF Ada

Before me, Lori T. Benfiel, a Notary Public of said County and State, personally appeared Julie Marple, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be Vice President of Northwest Real Estate Capital Corp. an Idaho nonprofit corporation, the sole member of The Sandstone Manager LLC an Idaho limited liability company, the manager of Northwest Sandstone LLC, the within named bargainer, an Idaho limited liability company, and that she as such Vice President executed the foregoing instrument for the purposes therein contained, by signing the name of the nonprofit corporation in its capacity as sole member of the limited liability company in its capacity as manager of the limited liability company, and on its behalf, by herself as Vice President of such nonprofit corporation.

Witness my hand and seal, at Office in Boise, Idaho, this 26th day of September, 2019.


Notary Public

My Commission Expires: 7-18-2025



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

Debtor Name/Record Owner: Northwest Sandstone LLC

Debtor Chief Executive Office Address:
210 W. Mallard Drive, Suite A
Boise, Idaho 83706

Debtor Organizational ID Number: 3423957

Secured Party Name: Boston Capital Intermediate Term
Income Fund II LLC
Secured Party Chief Executive Office Address and
Address for Notices:

c/o Boston Capital Finance LLC
One Boston Place, 22nd Floor
Boston, MA 02108
Attn: Sean Curry and Bill Fazzano
TEL: 617-624-8900

With a copy to:

Kutak Rock LLP
303 Peachtree Street N.E., Suite 2750
Atlanta, GA 30308
Attn: Patricia Luna, Esq.
TEL: 404-222-4672

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

The Land referred to herein below is situated in the County of Iron, State of Utah, and is described as follows:

Beginning South 00°18'38" East, 1035.35 feet along the section line and North 90°00'00" West, 2679.92 feet from the East quarter corner of Section 35, Township 35 South, Range 11 West, Salt Lake Meridian; thence South 76°44'30" East, 84.06 feet; thence along the arc of a curve to the right, having a radius of 200.00 feet, a distance of 206.22 feet; thence South 17°39'43" East, 189.85 feet; thence along the Northwesterly right of way line of Canyon Commercial Avenue and the arc of a non-tangent curve to the left, having a radius of 330.00 feet, a distance of 195.82 feet, long chord for said curve bears South 54°45'08" West, 192.96 feet South; thence 37°45'11" West, 145.22 feet along said right of way line; thence North 52°14'49" West, 202.76 feet; thence North 13°19'22" East, 181.52 feet; thence South 76°44'26" East, 19.17 feet; thence North 13°15'34" East, 271.13 feet to the point of beginning.