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4/28/2016 10:58:00 AM \$110.00
Book - 10425 Pg - 6502-6552
Gary W. Ott
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COTTONWOOD TITLE
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Loan Number 694002900

**DEED OF TRUST AND SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT WITH
ASSIGNMENT OF LEASES AND RENTS**

DATED AS OF

APRIL 27, 2016

GRANTED BY

AOS APARTMENTS, LLC, a Utah limited liability company

TO

FOR THE BENEFIT OF

RIVERSOURCE LIFE INSURANCE COMPANY, a Minnesota corporation

THIS INSTRUMENT IS ALSO TO BE FILED AS A FIXTURE FILING IN THE REAL ESTATE RECORDS OF SALT LAKE COUNTY, UTAH, AND CONSTITUTES A FIXTURE FILING. INFORMATION CONCERNING THE BORROWER/DEBTOR AND THE PROPERTY COVERED BY THIS FILING ARE CONTAINED HEREIN.

THIS DOCUMENT WAS DRAFTED BY:

Sidwell No. 16-17-476-010, 16-17-476-040
16-17-476-023, 16-17-476-009

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DEED OF TRUST AND SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT
WITH ASSIGNMENT OF LEASES AND RENTS

THIS Indenture (“Instrument”) is made and delivered as of the 27 day of April, 2016 by AOS APARTMENTS, LLC, a Utah limited liability company (“Borrower”), having a mailing address of 1963 South 1200 East, Suite #106, Salt Lake City, Utah 84105, to COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation (“Trustee”), having a mailing address of 1996 East 6400 South, Suite 1200, Salt Lake City Utah 84121, for the benefit of RIVERSOURCE LIFE INSURANCE COMPANY, a Minnesota corporation (“Lender”), having a mailing address of c/o Real Estate Loan Management, 25540 Ameriprise Financial Center, Minneapolis, Minnesota 55474.

WITNESSETH, that Borrower, in consideration of the “Indebtedness” (as hereinafter defined) and the sums advanced to Borrower in hand paid by Lender, receipt whereof is hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL AND CONVEY unto Trustee, its successors and assigns, forever, in trust for the benefit of Lender with power of sale and right of entry and possession, AND GRANTS TO LENDER A SECURITY INTEREST IN the following properties to secure (a) payment of the “Note” (as hereinafter defined) and all amounts owing under the Note and any documents securing the Note; and (b) due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Borrower contained in the Note, this Instrument and any other “Loan Documents” (as hereinafter defined) (all of the following being hereafter collectively referred to as the “Premises”):

GRANTING CLAUSE

A

REAL PROPERTY

All the tracts or parcels of real property lying and being in the County of Salt Lake, State of Utah, all as more fully described in Exhibit A attached hereto and made a part hereof, together with all the estates and rights in and to the real property, water, mineral or oil rights and in and to lands lying in streets, alleys and roads or gores of land adjoining the real property and all annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property and all proceeds and products derived therefrom whether now owned or hereafter acquired.

GRANTING CLAUSE

B

IMPROVEMENTS, FIXTURES, EQUIPMENT
AND PERSONAL PROPERTY

All equipment (including Borrower’s interest in any lease of such equipment), buildings, structures, fixtures, improvements, building supplies and materials and other personal property now or hereafter attached to, located in, placed in or necessary to the use, operation or maintenance of the improvements on the Premises including, but without being limited to, all

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machinery, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, as well as all elevators, escalators, overhead cranes, hoists and assists, and the like, and all furnishings, supplies, draperies, maintenance and repair equipment, window and structural cleaning rigs and equipment, floor coverings, appliances, screens, storm windows, blinds, awnings, shrubbery and plants, stoves, ranges, ovens, refrigerators, dishwashers, clothes dryers, washing machines, disposals and compactors (it being understood that the enumeration of specific articles of property shall in no way be held to exclude items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Borrower in any such items hereafter acquired, and all personal property which by the terms of any lease shall become the property of Borrower at the termination of such lease, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises, but excluding therefrom the removable personal property owned by tenants in the Premises.

GRANTING CLAUSE
C
RENTS, LEASES AND PROFITS

All rents, issues, income, revenue, receipts, fees, and profits now due or which may hereafter become due under or by virtue of and together with all right, title and interest of Borrower in and to any lease, license, sublease, contract or other kind of occupancy agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof together with all security therefor and all monies payable thereunder, including, without limitation, tenant security deposits, and all books and records which contain information pertaining to payments made thereunder and security therefor, subject, however, to the conditional permission herein given to Borrower to collect the rents, income and other normal income benefits arising under any agreements. Lender shall have the right, not as a limitation or condition hereof but as a personal covenant available only to Lender, at any time and from time to time, to notify any lessee of the rights of Lender hereunder.

Together with all right, title and interest of Borrower in and to any and all contracts for sale and purchase of all or any part of the property described in Granting Clauses A, B and C hereof, and any down payments, earnest money deposits or other sums paid or deposited in connection therewith.

GRANTING CLAUSE
D
JUDGMENTS, CONDEMNATION AWARDS,
INSURANCE PROCEEDS,
AND OTHER RIGHTS

All awards, compensation or settlement proceeds made by any governmental or other lawful authorities for the threatened or actual taking or damaging by eminent domain of the whole or any part of the Premises, including any awards for a temporary taking, change of grade of streets or taking of access, together with all insurance proceeds resulting from a casualty to any portion of the Premises; all rights and interests of Borrower against others, including adjoining property owners, arising out of damage to the property including damage due to environmental injury or release of hazardous substances.

GRANTING CLAUSE
E
LICENSES, PERMITS, EQUIPMENT LEASES
AND SERVICE AGREEMENTS

All right, title and interest of Borrower in and to any licenses, permits, regulatory approvals, government authorizations, franchise agreements and equipment or chattel leases, service contracts or agreements, trade names, any and all other intangibles, including general intangibles and payment intangibles, and all proceeds therefrom, arising from, issued in connection with or in any way related to the use, occupancy, operation, maintenance or security of the Premises, together with all replacements, additions, substitutions and renewals thereof, which may be assigned pursuant to agreement or law.

GRANTING CLAUSE
F
PROCEEDS

All sale proceeds, refinancing proceeds or other proceeds, including deposits and down payments derived from or relating to the property described in Granting Clauses A through E above.

AND BORROWER, Borrower's heirs, administrators, personal representatives, successors and assigns, covenants with Lender, its successors and assigns, that Borrower is lawfully seized of the Premises and has good right to sell and convey the same; that the Premises is free from all encumbrances except as may be set forth in the ALTA Loan Policy (the "Title Policy") to be issued to Lender and insuring the first lien position of this Instrument (hereinafter referred to as the "Permitted Encumbrances"); that Lender, its successors and assigns, shall quietly enjoy and possess the Premises; and that Borrower, its successors and assigns, will WARRANT AND DEFEND the title to the same against all lawful claims not specifically excepted in this Instrument.

TO HAVE AND TO HOLD THE SAME, together with the possession and right of possession of the Premises, unto Trustee for the benefit of Lender, its successors and assigns, forever.

PROVIDED NEVERTHELESS, that if Borrower, Borrower's heirs, administrators, personal representatives, successors or assigns, shall pay to Lender, its successors or assigns, the sum of Four Million Two Hundred Sixty-Five Thousand and 00/100 Dollars (\$4,265,000.00), according to the terms of that certain Promissory Note in said principal amount (hereinafter referred to as the "Note") of even date herewith executed by Borrower and payable to Lender, the terms and conditions of which are incorporated herein by reference and made a part hereof, together with any extensions, modifications, substitutions, replacements, consolidations or renewals thereof, due and payable with interest thereon as provided therein, the balance of said principal sum together with interest thereon being due and payable in any event on May 1, 2036, and shall repay to Lender, its successors or assigns, at the times demanded and with interest thereon at the same rate specified in the Note, all sums advanced in protecting the lien of this Instrument, in payment of taxes on the Premises, in payment of insurance premiums covering improvements thereon, in payment of principal and interest on prior liens, in payment of expenses and attorneys' fees herein provided for and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, and Prepayment Fee (as defined in the Note), if any, being hereinafter collectively referred to as the "Indebtedness"), and shall keep and perform all of the covenants and agreements herein contained, then this Instrument shall become null and void, and shall be released at Borrower's expense.

AND IT IS FURTHER COVENANTED AND AGREED AS FOLLOWS:

ARTICLE 1
GENERAL REPRESENTATIONS AND WARRANTIES

Section 1.1. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender, its successors and assigns, that, as of the date hereof:

- (a) Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Utah, and has all requisite power and authority to own and operate the Premises, to enter into the Note, this Instrument, that certain Assignment of Leases and Rents of even date herewith (the "Assignment of Leases"), from Borrower to Lender, that certain Hazardous Materials or Wastes Indemnity Agreement of even date herewith (the "Indemnity Agreement"), and any other document securing the Note, to execute all other documents relating to the loan evidenced by the Note (the "Loan") and make all representations, warranties and covenants contained in such documentation. The Note, this Instrument, the Assignment of Leases, the Indemnity Agreement, all

UCC Financing Statements and all other documents, instruments and agreements relating to any of them or evidencing or securing the Loan are herein referred to as the "Loan Documents". Borrower has the power and authority to borrow the monies and otherwise assume and perform as contemplated hereunder and under the Loan Documents relating to or executed in connection with the Indebtedness, and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

- (b) Any person or entity holding a Controlling Interest (as hereinafter defined), either directly or indirectly in Borrower, is of legal age, legally competent and under no legal disability, or is duly organized, validly existing and in good standing under the laws of the state of its organization, and has all requisite power and authority to act on behalf of Borrower.
- (c) Neither the borrowing of the monies nor the execution and delivery of the Loan Documents nor the performance of the provisions of the agreements therein contained on the part of Borrower will contravene, violate or constitute a default under any of the documents by which Borrower is created or governed, or any agreement with any persons or entities having an interest in Borrower, or any creditors of Borrower, or any law, ordinance, governmental regulation, agreement or indenture to which Borrower is a party or by which Borrower or Borrower's properties are bound.
- (d) There are no (i) bankruptcy proceedings involving Borrower and none is contemplated; (ii) dissolution proceedings involving Borrower and none is contemplated; (iii) unsatisfied judgments of record against Borrower; or (iv) tax liens filed against Borrower.
- (e) The Loan Documents have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms.
- (f) There are no judgments, suits, actions or proceedings at law or in equity or by or before any governmental instrumentality or agency now pending against or, to the best of Borrower's knowledge, threatened against Borrower or its properties, or both, nor has any judgment, decree or order been issued against Borrower or its properties, or both, which would have a material adverse effect on the Premises or the financial condition of Borrower or Borrower's properties.
- (g) No consent or approval of any regulatory authority having jurisdiction over Borrower is necessary or required by law as a pre-requisite to the execution, delivery and performance of the terms of the Loan Documents.

- (h) Borrower is not, as of the date hereof, in default in the payment or performance of any of Borrower's obligations in connection with borrowed money or any other major obligation.
- (i) The Premises is free from any mechanics' or materialmen's liens or claims. There has been no labor or materials furnished to the Premises that has not been paid for in full.
- (j) Borrower has no notice, information or knowledge of any change contemplated in any applicable law, ordinance, regulation, or restriction, or any judicial, administrative, governmental or quasi-governmental action, or any action by adjacent land owners, or natural or artificial condition existing upon the Premises which would limit, restrict, or prevent the contemplated or intended use and purpose of the Premises.
- (k) There is no pending Condemnation (as defined herein) or similar proceeding affecting the Premises, or any portion thereof, nor to the best knowledge of Borrower, is any such action being presently contemplated.
- (l) No part of the Premises is being used for agricultural purposes or being used for a personal residence by Borrower or any persons having an interest in Borrower.
- (m) The Premises is undamaged by fire, windstorm, or other casualty.
- (n) The Premises complies with all zoning ordinances, energy and environmental codes, building and use restrictions and codes, and any requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Premises as a 63-unit apartment building, and has received no notices of violation from any governmental or other regulatory authorities with regard to Borrower's use and operation of the Premises.
- (o) The heating, electrical, sanitary sewer plumbing, storm sewer plumbing, potable water plumbing and other building equipment, fixtures and fittings in the existing improvements on the Premises are in good condition and working order, are adequate in quantity and quality for normal and usual use, and are fit for the purposes intended and the use contemplated.
- (p) The Premises is covered by one or more tax parcels which pertain to the Premises only and not to any property which is not subject to this Instrument.
- (q) The Premises is improved with an apartment building and related parking, has frontage on, and direct access for ingress and egress to publicly dedicated street(s) known as South 1200 East.

- (r) Borrower has good and clear record and marketable title in fee to such of the Premises as is real property, subject to no liens, encumbrances or restrictions other than Permitted Encumbrances.
- (s) Neither Borrower, any affiliate of Borrower, any member of Borrower nor any Guarantor (as defined herein) has been the subject of foreclosure or insolvency proceedings.
- (t) Borrower is not presently insolvent, and the execution and delivery of the Loan Documents will not render Borrower insolvent. As used herein, the word "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all of such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.
- (u) After the execution and delivery of the Loan Documents, Borrower shall have sufficient working capital, including cash flow from the Premises or other sources, not only to adequately maintain the Premises, but also to pay all of Borrower's outstanding debts as they become due.
- (v) Neither Borrower, any affiliate of Borrower, any member of Borrower nor any Guarantor is (a) an "employee benefit plan" as defined under ERISA or (b) a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and the Premises do not constitute "plan assets" within the meaning of the Department of Labor Regulation Section 2510.3-101.
- (w) Borrower has complied with all requirements of the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213, as the same may be amended from time to time.
- (x) Neither Borrower, any affiliate of Borrower, any member of Borrower nor any Guarantor is or will become a Person described by Section 1 of The Anti-Terrorism Executive Order 13,224 of September 23, 2001 blocking property and prohibiting transactions with Persons who commit, threaten to commit, or support terrorism, 66 Fed. Reg. 49,049 (2001), or described in any rule or regulation implementing the same and, to the best knowledge and belief of Borrower after due and adequate diligence, neither Borrower, any affiliate of Borrower, any member of Borrower nor any Guarantor engages or will engage in any dealings or transactions, or be otherwise associated with, any such Persons.
- (y) Borrower, all affiliates of Borrower, all members of Borrower and all Guarantors are in compliance, and will remain in compliance, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT).

Section 1.2. CONTINUING OBLIGATION.

Borrower further warrants and represents that all statements made hereunder are true and correct and that all financial statements, data and other information provided to Lender by Borrower relating to or provided in connection with this transaction has not and does not contain any statement which, at the time and in the light of the circumstances under which it was made, would be false or misleading with respect to any material fact, or would omit any material fact necessary in order to make any such statement contained therein not false or misleading in any material respect, and since such statement, data or information was provided there has been no material change thereto or to the financial condition of Borrower. Should Borrower subsequently obtain knowledge that any such representation was or is untrue, Borrower shall immediately notify Lender as to the untrue nature of said representation and agrees to take action as may be necessary to cause such representation to become true.

ARTICLE 2
COVENANTS AND AGREEMENTS

Borrower covenants and agrees for the benefit of Lender, its successors and assigns, as follows:

Section 2.1. PAYMENT OF INDEBTEDNESS; OBSERVANCE OF COVENANTS.

Borrower will duly and punctually pay each and every installment of principal, fee, if any, and interest on the Note, all deposits required herein, and all other Indebtedness, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other Loan Documents as such instrument may be amended, modified, restated and in effect from time to time.

Section 2.2. MAINTENANCE AND REPAIRS.

Borrower agrees that it will keep and maintain the Premises in good, first class condition, repair and operating condition free from any waste or misuse, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises, which may become damaged or destroyed, to their condition prior to any such damage or destruction. Borrower further agrees that without the prior written consent of Lender, it will not remove or expand any improvements on the Premises, erect any new improvements or make any material alterations in any improvements which will alter the basic structure, adversely affect the market value or change the existing architectural character of the Premises, and agrees that any other buildings, structures and improvements now or hereafter constructed on or in the Premises or repairs made to the Premises shall be completed in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations, requirements and permits and in accordance with plans and specifications previously

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delivered to and approved in advance in writing by Lender. Borrower agrees not to acquiesce in any rezoning classification, modification or restriction affecting the Premises without the written consent of Lender. Borrower agrees that it will not abandon or vacate the Premises. Borrower agrees that it will provide, improve, grade, surface and thereafter maintain, clean, repair and adequately light all parking areas within the Premises, together with any sidewalks, aisles, streets, driveways and curb cuts and sufficient paved areas for ingress and right-of-way to and from the adjacent public thoroughfare necessary or desirable for the use thereof and maintain all landscaping thereon. Borrower shall obtain and at all times keep in full force and effect such governmental approvals as may be necessary to comply with all governmental requirements relating to Borrower and the Premises.

Section 2.3. PAYMENT OF OPERATING COSTS; LIENS AND OTHER INDEBTEDNESS.

Borrower agrees that it will pay all operating costs and expenses of the Premises; keep the Premises free from mechanics' liens, materialmen's liens, judgment liens and other liens, executions, attachments or levies (hereinafter collectively referred to as "Liens"); and will pay when due all permitted indebtedness which may be secured by a mortgage, deed of trust, lien or charge on the Premises, whether prior to, subordinate to or of equal priority with the lien hereof, and upon request will exhibit to Lender satisfactory evidence of such payment and discharge.

Section 2.4. PAYMENT OF IMPOSITIONS.

Borrower will pay when due and before any penalty or interest attaches because of delinquency in payment, all taxes, installments of assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or the Indebtedness (hereinafter collectively referred to as the "Impositions"); and will upon demand furnish to Lender proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee under a mortgage or a beneficiary under a deed of trust the payment of the whole or any part of the Impositions herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deed of trust or debts secured by deeds of trust or a beneficiary's interest in mortgaged premises, so as to impose such Imposition on Lender or on the interest of Lender in the Premises, then, in any such event, Borrower shall bear and pay the full amount of such Imposition, provided that if for any reason payment by Borrower of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness wholly or partially usurious, Lender, at its option, may declare the whole sum secured by this Instrument with interest thereon to be immediately due and payable, without Prepayment Fee, or Lender, at its option, may pay that amount or portion of such Imposition as renders the Indebtedness unlawful or usurious, in which event Borrower shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

Section 2.5. CONTEST OF LIENS AND IMPOSITIONS.

Borrower shall not be required to pay, discharge or remove any Liens or Impositions so long as Borrower shall in good faith contest the same or the validity thereof, by appropriate legal proceedings which shall operate to prevent the collection of the Liens or Impositions so contested and the sale of the Premises, or any part thereof to satisfy the same, provided that Borrower shall, prior to any such contest, have given such security as may be demanded by Lender to ensure such payments and prevent any sale or forfeiture of the Premises by reason of such nonpayment. Any such contest shall be prosecuted in accordance with the laws and rules pertaining to such contests and in all events with due diligence and Borrower shall promptly after final determination thereof pay the amount of any such Liens or Impositions so determined, together with all interest and penalties, which may be payable in connection therewith. Notwithstanding the provisions of this section, Borrower shall (and if Borrower shall fail so to do, Lender, may but shall not be required to) pay any such Liens or Impositions notwithstanding such contest if, in the opinion of Lender, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

Section 2.6. PROTECTION OF SECURITY.

Borrower agrees to promptly notify Lender of and appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness or the rights or interest of Lender hereunder. Lender may elect to appear in or defend any such action or proceeding and Borrower agrees to indemnify and reimburse Lender from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including without limitation costs of evidence of title and attorneys' fees.

Section 2.7. ANNUAL STATEMENTS.

During the term of this Instrument, Borrower or any successor to Borrower (if the Premises is conveyed pursuant to a transfer permitted by Lender) will provide Lender with (a) annual operating statements for the Premises; and (b) annual financial statements for Borrower or such successor to Borrower and of all Guarantors and any successor guarantors of the Loan within ninety (90) days following the end of each calendar or fiscal year, as applicable.

Borrower covenants that it shall keep true and accurate records of the operation of the Premises. The annual operating statements provided to Lender for the Premises shall contain all relevant financial information, including, but not limited to, gross income (itemized as to source), operating expenses (itemized), depreciation charges, net operating income (before and after federal income taxes), and such additional information as Lender may request from time to time.

Annual financial statements provided to Lender shall include a balance sheet and profit and loss statement. For a corporate Borrower, successor to Borrower or guarantor, the financial statements shall be certified by an authorized officer of the corporation and shall include any

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supplemental schedules provided to stockholders. Financial statements submitted by individuals shall be certified by each individual or by an independent certified public accountant in good standing. Partnerships, trusts and limited liability companies shall submit financial statements certified by an authorized partner, trustee or member, as applicable.

All of the required operating and financial statements shall be prepared at Borrower's expense, and each shall conform to generally accepted accounting principles and be satisfactory in form and content to Lender. Borrower shall also furnish a rent roll in form acceptable to Lender of all tenants having leases on the Premises on an annual basis and at such other times as requested by Lender. Lender shall have the right to examine at their place of safekeeping, all books, accounts and records relating to the operation of the Premises, to make copies or abstracts therefrom and to discuss the affairs, finances or accounts with the owners and employees of Borrower and Borrower's accountants in the event Borrower fails to furnish the required statements in a timely manner. Said examination shall be at Lender's expense unless an Event of Default has occurred or Borrower's statements are found to contain significant discrepancies. In the event Borrower's statements contain significant discrepancies or upon an Event of Default, Lender may cause an audit to be made of the respective books and records at the sole cost and expense of Borrower. Failure to comply with the provisions of this section shall constitute an Event of Default hereunder.

Section 2.8. ADDITIONAL ASSURANCES.

Borrower agrees upon request by Lender to execute and deliver further instruments, financing statements and/or continuation statements under the Uniform Commercial Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Instrument and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof, or intended so to be. Borrower agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing, the issuance and delivery of the Note, the filing or recording of this Instrument and the Assignment of Leases or the delivery filing and recording of such further assurances and instruments as may be required pursuant to the terms of this section.

Section 2.9. MAINTENANCE OF EXISTENCE.

Borrower agrees to maintain its existence as a limited liability company under the laws of the State of Utah, and not to re-domesticate, dissolve, liquidate, wind-up, consolidate or merge during the term hereof, without the prior written consent of the Lender.

Section 2.10. DUE ON SALE OR MORTGAGING, ETC.

In the event that without the written consent of Lender being first obtained, Borrower or any permitted subsequent owner of the Premises ("Subsequent Owner") sells, conveys, transfers, further mortgages, changes the form of ownership, or encumbers or disposes of the Premises, or

any part thereof, or any interest therein, or agrees to do so, whether any such event is voluntary, involuntary or by operation of law, then at Lender's sole option, Lender may declare the Indebtedness immediately due and payable in full and call for payment of the same at once, together with the Prepayment Fee then in effect under the terms of the Note.

For the purposes hereof, a "Controlling Interest" shall be an ownership or beneficial interest, held either directly or indirectly, in Borrower or a Subsequent Owner that permits the holder to control operational and strategic decisions of Borrower or a Subsequent Owner. Any person or entity holding a Controlling Interest in Borrower or a Subsequent Owner shall sometimes hereinafter be referred to as a "Controlling Party." Any person or entity having an ownership or beneficial interest, either directly or indirectly, in Borrower or a Subsequent Owner, whether or not such interest is a Controlling Interest, shall sometimes hereinafter be referred to as an "Owner." Notwithstanding anything to the contrary contained in this Instrument, for the purposes of this Instrument, each of Ned Skanchy, Nathan Skankey and Bi-Skan, Ltd. Shall each be deemed to be a Controlling Party.

If any Controlling Party sells, conveys, transfers or pledges all or any portion of a Controlling Interest, or agrees to do so, whether any of the foregoing is voluntary, involuntary or by operation of law, such action shall constitute a transfer for purposes of this section and shall entitle Lender to the rights and remedies set forth above.

The dissolution of any entity or the death of any person that is a Borrower, Controlling Party, or Subsequent Owner shall constitute a transfer of a Controlling Interest for the purpose of this section. In the event of the death of a person who is the Borrower, a Controlling Party or Subsequent Owner, Lender must: (a) receive written notice thereof within ninety (90) days of such death; and (b) be provided with a replacement person or entity acceptable to Lender in its sole discretion within one (1) year of the date of such death or prior to any distribution of assets to a devisee, an heir or other beneficiary of such deceased person, whichever is sooner. If such replacement is acceptable to Lender, the transfer shall be permitted without a Transfer Fee (as defined below) or change in the terms of the Loan.

In the event Borrower shall request the consent of Lender in accordance with this section, Borrower shall deliver a written request to Lender together with (a) a review fee of Five Hundred and 00/100 Dollars (\$500.00); and (b) complete information regarding such transfer, conveyance or encumbrance (including complete information concerning the person or entity to acquire the interest conveyed). Lender shall be allowed thirty (30) days after receipt of all requested information for evaluation of such request. In the event that such request is not approved within such thirty (30) day period, it shall be deemed not approved. If such transfer, conveyance or encumbrance is approved, Borrower shall pay to Lender a processing fee in the amount of Three Thousand and 00/100 Dollars (\$3,000.00) to compensate Lender for processing the request, along with a good faith deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), which shall be held by Lender in a non-interest bearing account. The good faith deposit shall be returned to Borrower when all conditions have been met, the transaction has closed and Lender

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has received all required post-closing documentation including, but not limited to, recorded documents, title policies/endorsements and insurance policies. In the event the transaction does not close for whatever reason, Lender shall refund the good faith deposit, less any out-of-pocket expenses, including attorneys' fees, incurred by Lender.

Approval hereunder by Lender may be conditioned upon such modifications of the terms of the Loan as determined by Lender in its sole discretion, payment of a transfer fee equal to one percent (1%) of the then outstanding principal balance of the Loan ("Transfer Fee"), and Borrower shall provide other items as requested from Lender or its counsel. The Transfer Fee shall be equal to two percent (2%) of the then outstanding principal balance of the Loan if the request for transfer is made by Borrower during the first Loan Year (as defined in the Note) and approved by Lender. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

Section 2.11. PERMITTED TRANSFER.

Notwithstanding the terms of Section 2.10 above, Lender shall allow certain transfers or conveyances in the following situations pursuant to the specified conditions:

- (a) Estate Planning. Lender agrees that it shall neither withhold its consent nor require payment of a fee for transfers of Controlling Interests in Borrower by any Controlling Party among themselves or to immediate family members (i.e. spouse and children) or to entities owned by such family members for estate planning purposes, provided the following conditions have been met:
 - (i) no Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents;
 - (ii) Ned Skanchy, Nathan Skankey and Bi-Skan, Ltd. (together, "Guarantors") each maintain an ownership interest in Borrower;
 - (iii) current financial information (reflecting the current assets) is provided for the Guarantors;
 - (iv) the Guarantors shall remain liable for all obligations under the terms of the Indemnity Agreement and the Limited Guaranty Agreement dated of even date herewith (the "Guaranty Agreement");
 - (v) Lender has been given thirty (30) days prior written notice of such transfer;

- (vi) prior to such transfer, copies of all transfer documents, and such other documentation or information as Lender deems necessary, and which is satisfactory in all respects to Lender, have been received;
 - (vii) Lender shall be put to no expense in connection with such transaction; Borrower shall pay all costs and expenses, including Lender's attorneys' fees and related costs;
 - (viii) notwithstanding the foregoing, in the event any Guarantor transfers its Controlling Interest to a trust for the benefit of said Guarantor's immediate family members, Lender shall require that the trust (or the trustee on behalf of the trust, if applicable under local law) join in any Guaranty Agreement and Indemnity Agreement executed by such Guarantor;
 - (ix) if required by Lender, Borrower shall also provide Lender with a good faith deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) which shall be held and returned by Lender as described in Section 2.10 above; and
 - (x) Borrower shall provide such other items as may be requested by Lender or its counsel.
- (b) Entity Conversion. Lender shall consent to the transfer of the entire Premises, without requiring the payment of a fee, from Borrower to an entity whose sole asset is the Premises ("Entity"), provided the following conditions have been met:
- (i) no Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents;
 - (ii) Borrower provides evidence satisfactory to Lender that the ownership, control and management of the Entity shall be the same as those of Borrower;
 - (iii) Entity shall fully assume the obligation to pay the Note and otherwise perform the terms and conditions of the Loan Documents pursuant to an assumption agreement in form and content acceptable to Lender;
 - (iv) Lender has been given thirty (30) days prior written notice of such transfer;
 - (v) Lender receives an acceptable opinion from Entity's counsel confirming that Entity is duly organized, validly existing and in good standing under

the laws of the state of its organization and in the state where the Premises is located; and all documents executed in connection with the transfer, including the assumption agreement, have been duly authorized, executed and delivered and are enforceable in accordance with their terms;

- (vi) Borrower shall:
 - (1) execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements in regard to the Loan Documents as Lender may require, and
 - (2) deliver such endorsements to the Title Policy as Lender may require, including a down date endorsement to the Title Policy insuring that the (a) first lien position of this Instrument is subject to no liens or encumbrances other than those shown in the Title Policy and current taxes not yet due and payable, and (b) Entity is the owner of the Premises;
 - (vii) thirty (30) days prior to such transfer, copies of all transfer documents and such other documentation or information (including organizational documentation and updated property insurance information) as Lender deems necessary, and which is satisfactory in all respects to Lender, have been received;
 - (viii) the Guarantors shall remain liable for all obligations under the terms of the Indemnity Agreement and the Guaranty Agreement;
 - (ix) Lender shall be put to no expense in connection with such transaction; Borrower shall pay all costs and expenses, including Lender's attorneys' fees and related costs;
 - (x) if required by Lender, Borrower shall also provide Lender with a good faith deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) which shall be held and returned by Lender as described in Section 2.10 above; and
 - (xi) Borrower shall provide such other items as may be requested by Lender or its counsel.
- (c) One-Time Transfer. After the first Loan Year, and upon written request, Lender will approve one and only one transfer of the entire Premises, without requiring modification of the interest rate or maturity date stated in the Note, upon satisfaction of the following conditions:

- (i) no Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents;
- (ii) the transfer shall be to a transferee that Lender determines, in its sole judgment and discretion, to be reputable and competent and that:
 - (1) has experience in the business of owning commercial real estate of similar type, size and quality to the Premises and has a favorable reputation with respect to such business;
 - (2) has experience or has retained management with experience in the management of similar properties;
 - (3) has the necessary financial strength; and
 - (4) has never been in default under any loan held by Lender or an affiliate of Lender;
- (iii) notice of such transfer, together with such documentation as Lender may request regarding the transfer and the assuming person or entity, shall be given to Lender at least thirty (30) days prior to such transfer;
- (iv) for the projected twelve (12) month period following the date of the proposed transfer, the annualized pro forma Net Operating Income prior to the payment of debt service, as determined by Lender in its sole discretion, is at least one hundred twenty-five percent (125%) of the annual debt service on the Note and on all subordinate financing secured by the Premises, or any part thereof. For the purposes hereof, the term "Net Operating Income" for any period shall mean the aggregate rent, receipts and other revenues which have accrued to the benefit of the owner of the Premises during such period from bona fide arms-length tenants in actual possession of space in the Premises (based upon the then current certified rent roll), less the sum of all operating expenses, maintenance costs, management fees, insurance premiums, real estate taxes and assessments, and other costs, expenses and expenditures (excluding required capital expenditures) attributable to ownership of the Premises which is paid or accrued during such period, calculated in accordance with generally accepted accounting principles and management practices, but not including payments of principal or interest on the Indebtedness or on any secondary financing secured by the Premises, depreciation or other non-cash charges and income taxes. Lender shall have the right to require

delivery of evidence it deems necessary to establish the Net Operating Income from the Premises;

- (v) the proposed transferee and any substitute guarantors must assume and agree to perform all obligations under the Loan Documents pursuant to an assumption agreement acceptable to Lender. Borrower and all Guarantors shall remain liable for payment of all sums due under the Note and performance of all other terms and conditions of the Loan Documents, and the Guarantors, if any, shall remain liable for all obligations under the terms of the Indemnity Agreement and Guaranty Agreement. Lender may, in its sole discretion, agree to release Borrower and Guarantors from continuing liability under the Loan Documents if the transferee and any substitute Guarantors are qualified to assume all of the guaranty provisions in accordance with the terms of the Loan Documents and meet all of the conditions set forth in this section. Any such release shall be prospective only, and Borrower and any Guarantors shall remain liable for all actions taken and all events occurring prior to the date the Premises is transferred;
- (vi) Lender shall receive a review fee in the amount of Five Hundred and 00/100 Dollars (\$500.00), a processing fee in the amount of Three Thousand and 00/100 Dollars (\$3,000.00), a good faith deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) upon Borrower's acknowledgement of Lender's written consent, and a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan at the time of transfer. The good faith deposit shall be held and returned by Lender as described in Section 2.10 above;
- (vii) the transferee must acknowledge that future transfers and encumbrances will be subject to Lender's approval, which may, at Lender's sole discretion, be withheld or be conditioned upon payment of a fee and/or modification of the terms of the Loan Documents;
- (viii) Lender shall be put to no expense in connection with such transfer; Borrower shall pay all costs and expenses, including Lender's attorneys' fees and related costs;
- (ix) transfer of the Premises may only be as a whole and not in part;
- (x) Borrower shall:
 - (1) execute, deliver and record (when necessary) such amendments, supplements, corrections and replacements in regard to the Loan Documents as Lender may require, and

- (2) deliver such endorsements to the Title Policy as Lender may require, including a down date endorsement to the Title Policy insuring that the (a) first lien position of this Instrument is subject to no liens or encumbrances other than those shown in the Title Policy and current taxes not yet due and payable, and that (b) the transferee is the owner of the Premises;
- (xi) Lender is in receipt of a copy of a fully executed purchase/sale contract for the Premises, which contract shows that the total of all loans secured by the Premises does not exceed seventy-five percent (75%) of the purchase price. Lender may also require an appraisal of the Premises, in form and content satisfactory to Lender, prepared by an MAI appraiser approved by Lender. The appraisal shall show sufficient value of the Premises (exclusive of chattels) so that the total of all loans secured by the Premises does not exceed seventy-five percent (75%) of such appraised value. If the purchase/sale contract or the appraisal shows that the total amount of debt secured by liens against the Premises exceeds seventy-five percent (75%) of the value of the Premises, Lender may require, at Lender's option, a pay down of the Note or a pay down of the indebtedness secured by subordinate liens on the Premises so that such total will not exceed seventy-five percent (75%) of value;
- (xii) Lender receives an acceptable opinion from proposed transferee's counsel confirming that the proposed transferee is duly organized, validly existing, and in good standing under the laws of the state of its organization and in the state where the Premises is located; and all documents have been duly authorized, executed and are enforceable by their terms; and
- (xiii) Borrower shall provide such other items as may be requested by Lender or its counsel.
- (d) Transfers of Non-Controlling Interests. Owners not holding a Controlling Interest in Borrower may transfer their interests in the Borrower without Lender consent and without payment of any fee provided Lender has been given prior written notice of such transfer together with such documentation regarding the transfer and the transferee as Lender may request.

Section 2.12. CONSENT BY LENDER.

If Borrower requests Lender's review of, consent to and/or execution of documents in connection with (a) the assignment of this Instrument and the other Loan Documents to a Subsequent Owner, (b) a subordination agreement with a tenant of the Premises, which subordination agreement is on a form that is not Lender's standard form, or (c) any other transaction for which Borrower seeks Lender's approval except for lease approvals, Borrower

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agrees that it shall: (i) provide copies of such documents and other documentation or information as Lender deems necessary, satisfactory in all respects to Lender; (ii) give Lender thirty (30) days prior written notice of such requested consent and after receipt of all items in (i) above; and (iii) pay Lender a processing fee in the amount of Three Thousand and 00/100 Dollars (\$3,000.00) and its attorneys' fees and costs, if any. If required by Lender, Borrower shall also provide Lender with a good faith deposit in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) which shall be held and returned by Lender as described in Section 2.10 above.

ARTICLE 3
INSURANCE AND ESCROWS

Section 3.1. INSURANCE.

During the term of this Instrument, Borrower shall obtain and keep in full force and effect at its sole cost and expense the following insurance:

- (a) insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement, including the cost of debris removal, together with a vandalism and malicious mischief endorsement, sprinkler leakage endorsement, such perils endorsements as determined by Lender, all in the amount of not less than full replacement cost without deduction for depreciation of the improvements, (as shown in the appraisal submitted to and approved by Lender), and an agreed-amount endorsement, a replacement cost endorsement and a waiver of subrogation endorsement;
- (b) Broad Form Equipment Breakdown (Boiler and Machinery) Insurance on all equipment and pressure fired vessels or apparatus located on the Premises, and providing for full repair and replacement cost coverage;
- (c) Flood Insurance in the maximum amount available at any time during the term of this Instrument that the Premises are designated as lying within a flood plain as defined by the Federal Emergency Management Agency (FEMA);
- (d) Loss of Rents and/or Business Interruption Insurance covering risk of loss due to the occurrence of hazards insured against under the policies required in subsections (a), (b) and (c) hereof in an amount equal to: (i) rental for a twelve (12) month period, plus (ii) real estate taxes, special assessments, insurance premiums and other expenses required to be paid by the tenants under each lease of the Premises for such twelve (12) month period;
- (e) Comprehensive General Public Liability Insurance covering the legal liability of Borrower against claims for bodily injury, death or property damage occurring on, in or about the Premises in such minimum amounts and with such minimum limits as Lender may reasonably require;

- (f) Builders Risk Insurance and Worker's Compensation Insurance during the making of any alterations or improvements to the Premises; and
- (g) such other forms of insurance as Lender may require or as may be required by law.

In addition, Lender is to be furnished with such engineering data as it may require regarding the risk of earthquake or sinkhole damage to the Premises. If Lender shall determine in its sole opinion that there is a material earthquake or sinkhole risk, or if insurance against earthquake or sinkhole is required by law, Borrower will provide earthquake or sinkhole insurance. Said insurance policies shall: (i) be written on forms and with insurance companies which are satisfactory to Lender; (ii) name Borrower and Lender, as their interests may appear, as the insured parties; (iii) be in amounts sufficient to prevent Borrower from becoming a co-insurer of any loss thereunder; and (iv) bear a satisfactory mortgagee clause in favor of Lender with loss proceeds under any such policies to be made payable to Lender. All required policies of insurance together with evidence of the payment of current premiums therefor shall be delivered to Lender and shall provide that Lender receive written notice at least ten (10) days in advance, or as otherwise provided, prior to cancellation, amendment or termination of such policies. Borrower shall, no later than five (5) days prior to the expiration of any such policy, deliver evidence acceptable to Lender, in its sole judgment, verifying the renewal of such insurance together with evidence of the payment of current premiums therefor. Borrower shall at its expense furnish on renewal of insurance policies or upon request of Lender evidence of the replacement value of the improvements on the Premises in form satisfactory to Lender. Insurance coverage must at all times be maintained in proper relationship to such replacement value and must always provide for agreed amount coverage. Notwithstanding anything contained herein to the contrary, if Borrower currently has a blanket policy of insurance that satisfies the coverages required hereunder for the Premises, Lender will accept a certified or conformed copy of the blanket policy together with an original Certificate of Insurance naming Lender as mortgagee of the Premises.

In the event of foreclosure of this Instrument or acquisition of the Premises by Lender, all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Lender to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance, Borrower empowers Lender to effect insurance upon the Premises at Borrower's expense and for the benefit of Lender in the amounts and types aforesaid for a period of time covering the time lapse of insurance including lapse during redemption from foreclosure sale, and if necessary, to cancel any or all existing insurance policies. Borrower agrees to furnish Lender copies of all inspection reports and insurance recommendations received by Borrower from any insurer. Lender makes no representations that the above insurance requirements are adequate protection for a prudent property owner.

Section 3.2. ESCROWS.

Borrower shall deposit with Lender, or at Lender's request, with its servicing agent, on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness, a deposit to pay the Impositions and insurance premiums (hereinafter collectively referred to as the "Charges") in an amount equal to:

- (a) one-twelfth (1/12th) of the annual Impositions next to become due upon the Premises; provided that, with the first such deposit, there shall be deposited in addition an amount as estimated by Lender which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Lender's satisfaction that there will be sufficient funds on deposit to pay the Impositions as they come due; plus
- (b) one-twelfth (1/12th) of the annual premiums on each policy of insurance required to be maintained hereunder; provided that with the first such deposit there shall be deposited, in addition, an amount equal to one-twelfth (1/12th) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

based on Lender's estimate as to the amount of Impositions and insurance premiums necessary to insure that the full amount of such payment will be available to Lender at least one month in advance of the due date. Lender will, upon timely presentation to Lender by Borrower of the bills therefor, pay the Charges from such deposits. Borrower agrees to cooperate and assist in obtaining of tax bills when requested by Lender. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then Borrower shall immediately pay to Lender on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited towards subsequent Charges.

Notwithstanding the above, Lender agrees to waive escrow deposits for insurance premiums if all required policies of insurance together with evidence of the payment of current premiums are provided to Lender in compliance with the requirements of Section 3.1 above and there is no Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under the Loan Documents. Notwithstanding the foregoing, Lender reserves the right to require escrow deposits for insurance premiums at any time with respect to any transferee of the Premises after transfer of a Controlling Interest in Borrower or any subsequent Owner.

If an Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents, Lender may, at its option, without being required so to do, apply any deposits on hand to the payment of Charges whether

then due or not or to the Indebtedness, in such order and manner as Lender may elect. When the Indebtedness has been fully paid any remaining deposits shall be returned to Borrower as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness, shall be held for the purposes for which made as herein provided, may be held by Lender or its servicing agent and may be commingled with other funds of Lender, or its servicing agent, shall be held without allowance of interest thereon and without fiduciary responsibility on the part of Lender or its agents and shall not be subject to the direction or control of Borrower. Neither Lender nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, Lender or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, Lender shall be under no duty to seek a tax division or apportionment of the tax bill, and any payment of taxes based on a larger parcel shall be paid by Borrower, the deposits to be made hereunder shall be based on the larger tax parcel and Borrower shall expeditiously cause a tax subdivision to be made.

ARTICLE 4
UNIFORM COMMERCIAL CODE

Section 4.1. SECURITY AGREEMENT.

This Instrument shall constitute a security agreement as defined in the Uniform Commercial Code in effect in the State of Utah, as amended from time to time (hereinafter referred to as the "Code"), and Borrower hereby grants to Lender a security interest within the meaning of the Code in favor of Lender on the improvements, fixtures, equipment and personal property, the rents, leases and profits, the judgments, condemnation awards and insurance proceeds and other rights, and the licenses, permits, equipment leases, service agreements, and the proceeds described in Granting Clauses B, C, D, E and F of this Instrument (hereinafter referred to as the "Collateral"). Borrower hereby authorizes Lender to file such financing statements, amendments and continuations as Lender deems reasonable in Lender's discretion to perfect Lender's lien in the Collateral and to maintain such perfection.

Section 4.2. FIXTURE FILING.

As to those items of Collateral described in this Instrument that are, or are to become fixtures related to the real estate mortgaged herein, and all products and proceeds thereof, it is intended as to those items that THIS INSTRUMENT SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Premises are situated. The name of the record owner of said real estate is Borrower and the address of Borrower is set forth in page one to this Instrument. Information concerning the security interest created by this Instrument may be obtained from Lender, as secured party, at its address as set forth in page one of this Instrument. The address of Borrower, as debtor, is as set forth in page one to this Instrument. This document

covers goods which are or are to become fixtures. Borrower is a limited liability company organized under the laws of the State of Utah.

Section 4.3. REPRESENTATIONS AND AGREEMENTS.

Borrower represents and agrees:

- (a) Borrower is and will be the true and lawful owner of the Collateral, subject to no liens, Charges, security interests and encumbrances other than the lien hereof and the Permitted Encumbrances;
- (b) the Collateral is to be used by Borrower solely for business purposes and is being installed upon the Premises for Borrower's own use or as the equipment and furnishings leased or furnished by Borrower, as landlord, to tenants of the Premises;
- (c) the Collateral will not be removed from the Premises without the consent of Lender except in accordance with Section 4.4 hereof;
- (d) unless stated otherwise in this Instrument the only persons having any interest in the Collateral are Borrower and Lender and no financing statement covering any such property and any proceeds thereof is on file in any public office except pursuant hereto;
- (e) the remedies of Lender hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Lender including having such Collateral deemed part of the realty upon any foreclosure thereof;
- (f) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Lender;
- (g) Borrower will from time to time provide Lender on request with itemizations of all Collateral;
- (h) the filing of a financing statement pursuant to the Code shall never impair the stated intention of this Instrument that all improvements, fixtures, equipment and personal property described in Granting Clause B hereof are, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is

physically attached to the real property or any such item is referred to or reflected in a financing statement;

- (i) Borrower will on demand deliver all financing statements and/or continuations that may from time to time be required by Lender to establish and perfect the priority of Lender's security interest in such Collateral and all costs, including recording fees, shall be paid by Borrower;
- (j) Borrower shall give at least thirty (30) days written notice of any proposed change in Borrower's name, identity, state of registration for a registered organization, principal place of business, or structure and authorizes Lender to file prior to or concurrently with such change all additional financing statements that Lender may require to establish and perfect the priority of Lender's security interest in the Collateral;
- (k) at Lender's request, Borrower shall renew and pay all expenses of renewing the financing statement covering the Collateral in the event the security interest in such Collateral will expire by reason of statutory law prior to the end of the term of this Instrument; and
- (l) by signing this Instrument, Borrower authorizes Lender to file such financing statements, either before, on or after the date hereof, as Lender determines necessary or desirable to perfect the lien of Lender's security interest in the Collateral. Borrower further authorizes Lender to file such amendments or continuation statements as Lender determines necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Collateral.

Section 4.4. MAINTENANCE OF PREMISES.

Subject to the provisions of this section, in any instance where Borrower in its discretion determines that any item subject to a security interest under this Instrument has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Borrower may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function, provided, that such removal and substitution shall be of comparable quality and shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of this Instrument. Any amounts received or allowed Borrower upon the sale or other disposition of the removed items shall be applied only against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant or subtenant from removing from the Premises trade fixtures, furniture and equipment installed by any tenant and removable by such tenant under the terms of its lease, on the condition, however, that all damages to the Premises resulting from or caused by the removal thereof be repaired at the sole cost of Borrower if such tenant shall fail to so repair.

ARTICLE 5
APPLICATION OF INSURANCE AND CONDEMNATION AWARDS

Section 5.1. DAMAGE OR DESTRUCTION OF THE PREMISES.

Borrower will give Lender notice within thirty (30) days of damage to or destruction of the Premises, and in case of loss covered by insurance, Borrower shall provide Lender with copies of all notices and/or correspondence between Borrower and the insurance company. Lender (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom, provided, if Borrower is not in default hereunder, Borrower may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00). If Lender fails to assert claims against the insurance carrier, such failure shall not diminish or impair Lender's rights against Borrower. Any expense incurred by Lender in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Lender) shall be reimbursed to Lender first out of any such insurance proceeds. The insurance proceeds or any part thereof shall be applied to reduction of the Indebtedness or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Lender. In the event Lender does not make insurance proceeds available for restoration and applies the insurance proceeds to payment of the Indebtedness, no Prepayment Fee shall be due. In the event Lender does not make insurance proceeds available for reconstruction of the Premises, Borrower shall have the right to prepay the Loan in full without a Prepayment Fee within one hundred twenty (120) days after notice from Lender stating that such insurance proceeds will not be made available for reconstruction.

Notwithstanding the provisions above, in the event of insured damage to the improvements on the Premises, Lender agrees to make insurance proceeds available to the restoration or repair of the improvements on the Premises in accordance with the provisions of Section 5.2 hereof provided satisfactory evidence is delivered to Lender that: (a) the total cost of restoration and repair does not exceed twenty-five percent (25%) of the then outstanding principal balance of the Note; and (b) all conditions of Section 5.2 have been met.

Section 5.2. DISBURSEMENT OF INSURANCE PROCEEDS.

Should any insurance proceeds be applied to the restoration or repair of the Premises in accordance with this Article 5, the restoration or repair shall be done under the supervision of an architect acceptable to Lender, or at Lender's discretion, an engineer acceptable to Lender, and pursuant to site and building plans and specifications approved by Lender. The proceeds from insurance, after payment of costs and expenses of collection ("Net Proceeds"), shall be held by Lender for such purposes and will from time to time be disbursed by Lender to defray the costs of such restoration or repair under such safe-guards and controls as Lender may require and in accordance with standard construction loan procedures. Net Proceeds may, at the option of Lender, be disbursed through a title insurance company approved by Lender and at the sole cost

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of Borrower. Lender shall make Net Proceeds available for the payment of costs of repair or restoration of the improvements upon the Premises subject to or upon receipt of the following:

- (a) no Event of Default, or condition which with the passage of time, or giving of notice or both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents;
- (b) evidence that all leasing requirements for the Premises as established by Lender have been met;
- (c) satisfactory proof that all improvements have been fully restored, or that the expenditure of Net Proceeds will be sufficient to pay the cost to repair, restore or rebuild the improvements located on the Premises free and clear of all liens, except the lien of this Instrument. In the event Net Proceeds shall be insufficient to pay the cost to so repair, restore or rebuild the improvements, Borrower shall deposit with Lender funds equaling such deficiency, which, together with the Net Proceeds, shall be sufficient to pay for restoration, repair and rebuilding of the Premises;
- (d) (i) a statement of Borrower's architect, certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration and rebuilding have been performed to date in conformity with the plans and specifications that have been approved by Lender; and (ii) evidence satisfactory to Lender of payment for labor and materials furnished to the Premises with lien waivers substantiating such payments. Lender will release funds upon the satisfaction of requirements set forth herein at such time as lien waivers are reviewed and approved by Lender and the title company and the title company can assure Lender of a first lien position;
- (e) a waiver of subrogation from any insurer to the effect that such insurer has no claim as to Borrower or the then owner or other insured under the policy of insurance in question;
- (f) evidence that zoning, building and other necessary permits and approvals have been obtained;
- (g) satisfactory evidence that the improvements can be rebuilt substantially to the same condition as when originally financed and can with restoration and repair continue to be operated for the purposes utilized prior to such damage;
- (h) tenants of the Premises as designated by Lender shall certify to Lender their intention to continue to occupy the Premises without any abatement or adjustment

of rental payments (other than temporary abatements during the period of restoration and repair);

- (i) evidence that the appraised value of the Premises after such restoration or repair shall not be less than its appraised value as of the date hereof;
- (j) evidence of fulfillment of all other requirements, which Lender may make in connection with repair of the improvements on the Premises; and
- (k) executed escrow agreement by Borrower with Lender for Net Proceeds disbursement.

In the event Borrower shall fail to restore, repair or rebuild the improvements upon the Premises within a reasonable time, then such failure shall constitute an Event of Default hereunder and Lender, at its option and upon not less than thirty (30) days written notice to Borrower, may, in addition to its remedies contained in Article 8 hereof; (i) restore, repair or rebuild the said improvements for or on behalf of Borrower and for such purpose, may perform all necessary or appropriate acts to accomplish such restoration, repair or rebuilding; or (ii) immediately apply all or any part of Net Proceeds on account of the last maturing installments of the Indebtedness whether then due or not. In the event Net Proceeds exceed the amount necessary to complete the repair, restoration, or the rebuilding of the improvements upon the Premises, such excess may, at Lender's option, be applied on account of the last maturing installments of the Indebtedness, irrespective of whether such installments are then due and payable, without application of a Prepayment Fee, or be returned to Borrower. Damage to the Premises shall not excuse or defer payment on the Indebtedness as it comes due.

Section 5.3. CONDEMNATION.

Borrower will give Lender notice within thirty (30) days of any action, actual or threatened, of condemnation or eminent domain, and provide copies of all notices and/or correspondence between Borrower and the condemning agency. Borrower hereby assigns, transfers, and sets over to Lender the entire proceeds of any award or claim for damages for all or any part of the Premises taken or damaged under the power of eminent domain or condemnation (herein referred to as "Condemnation"), Lender being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Borrower will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises unless prior written consent of Lender is obtained. Any expenses incurred by Lender in intervening in such action or collecting Condemnation proceeds (including the cost of any independent appraisal) shall be reimbursed to Lender out of Condemnation proceeds prior to other payments or disbursements. Borrower shall direct the condemning authority to deliver the Condemnation proceeds to Lender, but should Borrower receive any Condemnation proceeds directly, it shall deliver such Condemnation proceeds to Lender within five (5) business days of receipt thereof. Condemnation proceeds or any part thereof shall be applied upon or in reduction of the

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Indebtedness or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Lender. In the event Lender does not make Condemnation proceeds available for restoration and applies the Condemnation proceeds to payment of the Indebtedness, no Prepayment Fee shall be due on the Condemnation proceeds so applied. Notwithstanding the foregoing, to the extent that Lender is entitled to a separate award for the Prepayment Fee payable under the terms of the Note which is independent from the Condemnation proceeds payable to Borrower with respect to the Premises, Lender shall be entitled to such separate award for such Prepayment Fee from the condemning authority.

ARTICLE 6 LEASES AND RENTS

Section 6.1. BORROWER TO COMPLY WITH LEASES.

Borrower will, at its own cost and expense, perform, comply with and discharge all of the obligations of Borrower under leases of all or any part of the Premises and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Borrower's interest in any leases of the Premises. Borrower will not modify, extend, renew, terminate, accept a surrender of, or in any way alter the terms of the leases, nor borrow against, pledge or assign any rentals due under the leases nor consent to a subordination or assignment of the interest of a tenant thereunder to any party other than Lender, nor anticipate the rents thereunder for more than one (1) month in advance or reduce the amount of rents and other payments thereunder, nor waive, excuse, condone or in any manner release or discharge a tenant of or from any obligations, covenants, conditions and agreements to be performed nor incur any indebtedness to a tenant, nor agree to any "free rent" period without Lender's consent, nor enter into any additional leases of all or any part of the Premises without the prior written consent of Lender. Borrower will deliver copies of all non-residential lease amendments and new leases to Lender within thirty (30) days of execution. Borrower shall notify Lender of a default by any tenant of the Premises who occupies ten percent (10%) or more of leasable space within the Premises. Notwithstanding the above restrictions, Borrower may enter into new residential apartment leases of the Premises having a term of one (1) year or less and may modify, extend, renew, terminate, accept a surrender of or alter the terms of the existing residential apartment leases of the Premises having a term of one (1) year or less without the prior written consent of Lender provided that any such action is made in the ordinary course of the Borrower's business in conformance with commercially reasonable, prudent and sound business practice. In addition, all residential apartment leases made during the term of this Instrument shall be prepared on the standard form lease submitted to and approved by Lender.

Section 6.2. LENDER'S RIGHT TO PERFORM UNDER LEASES.

Should Borrower fail to perform, comply with or discharge any obligations of Borrower under any lease of all or any part of the Premises or should Lender become aware of or be

notified by a tenant under any such lease of a failure on the part of Borrower to so perform, comply with or discharge its obligations under said lease, Lender may, but shall not be obligated to, and without further demand upon Borrower, and without waiving or releasing Borrower from any obligation contained in this Instrument, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by Lender in remedying any such failure including, without limitation, Lender's attorneys' fees together with interest at the Default Rate (as defined in the Note). All such sums, together with interest as aforesaid, shall become so much additional Indebtedness, but no such advance shall be deemed to relieve Borrower from any default hereunder.

Section 6.3. ASSIGNMENT OF LEASES AND RENTS.

Borrower does hereby unconditionally and absolutely sell, assign and transfer unto Lender all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any agreement or license for the use or occupancy of the Premises, whether now existing or entered into at any time during the term of this Instrument, all guaranties of any lessee's obligations under any such lease and all security deposits, it being the intention of this Instrument to establish an absolute transfer and assignment of all such leases and agreements and all of the rents, issues, income and profits from the Premises and/or Borrower's operation or ownership thereof unto Lender and Borrower does hereby appoint irrevocably Lender as Borrower's true and lawful attorney in Borrower's name and stead, which appointment is coupled with an interest, to collect all of said rents, issues, income and profits; provided, Lender grants to Borrower a revocable license to collect and retain such rents, issues, income and profits unless and until an Event of Default exists under this Instrument. Borrower assigns to Lender all guarantees of lessee's obligation under leases and all proceeds from settlements relating to terminations of leases and all claims for damages arising from rejection of any lease under the bankruptcy laws. Upon the occurrence of an Event of Default, and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder or during any period of redemption existing by law, forthwith, upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to enter upon and take and maintain possession of the Premises and any leases thereunder and collect and retain any rents, issues, income and profits from the Premises and hold, operate, manage and control the Premises and any such leases and to do such things in its discretion as may be deemed proper or necessary to enforce the payment or security of the rents, issues, income and profits of the Premises and the performance of the tenants' obligations under any leases of the Premises, with full power to cancel or terminate any lease for any cause or on any grounds which would entitle Borrower to cancel the same and to elect to disaffirm any lease made subsequent to this Instrument or subordinated to the lien hereof. All rents, issues, income, profits and payments received by Borrower after Lender has exercised any of its rights under this assignment or the Assignment of Leases shall be held by Borrower in trust for Lender and shall be delivered to Lender immediately without demand.

Lender shall not be obligated to perform or discharge any obligation or liability of the landlord under any of said leases and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or under or by reason of this Instrument. Any amounts incurred by Lender in connection with its rights hereunder, including costs, expenses and attorneys' fees, shall bear interest thereon at the Default Rate, and shall be additional Indebtedness and Borrower shall reimburse Lender therefor immediately upon demand. Lender may apply any of said rents, issues, income and profits received to the costs and expenses of collection, including attorneys' fees, to the payment of taxes, assessments and insurance premiums and expenditures for the upkeep of the Premises, to the performance of the landlord's obligations under the lease, to the performance of any of Borrower's covenants hereunder, and to any Indebtedness in such order as Lender may determine. The entering upon and taking possession of the Premises, the collection of such rents, issues, income and profits and the application thereof as aforesaid shall not cure or waive any Event of Default under this Instrument nor in any way operate to prevent Lender from pursuing any other remedy which it may now or hereafter have under the terms of this Instrument, nor shall it in any way be deemed to constitute Lender a mortgagee-in-possession. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises is in danger of being lost, materially injured or damaged, or whether the Premises is adequate to discharge the Indebtedness. Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the Premises has been or will be waived, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of set off against any person in possession of any portion of the Premises. Borrower further agrees that Borrower will not execute or agree to any subsequent assignment of any of the rents, issues, income or profits from the Premises without the prior written consent of Lender. The rights contained herein are in addition to and shall be cumulative with the rights given in the Assignment of Leases. To the extent inconsistent with the terms of this Article 6, the terms of the Assignment of Leases shall control.

ARTICLE 7 RIGHTS OF LENDER

Section 7.1. RIGHT TO CURE DEFAULT.

If an Event of Default, or condition which with the passage of time, or giving of notice of both would become such an Event of Default, exists under any of the terms, covenants and conditions of this Instrument, the Note or other Loan Documents, Lender may, but shall not be obligated to, without demand upon Borrower, and without waiving or releasing Borrower from any obligation in this Instrument contained, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by Lender in remedying any such failure together with expenses and attorneys' fees and with interest at the Default Rate. All such sums, together with interest as

aforesaid shall become Indebtedness. No such advance shall be deemed to relieve Borrower from any failure hereunder.

Section 7.2. NO CLAIM AGAINST LENDER.

Nothing contained in this Instrument shall constitute any consent or request by Lender, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Borrower or any party in interest with Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Lender in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Instrument.

Section 7.3. INSPECTIONS.

Borrower will permit Lender or its authorized representatives to enter the Premises at all times during normal business hours for the purpose of inspecting the same; provided Lender shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

Section 7.4. WAIVERS; RELEASES; RESORT TO OTHER SECURITY, ETC.

Without affecting the liability of any party liable for payment of any Indebtedness or performance of any obligation contained herein, and without affecting the rights of Lender with respect to any security not expressly released in writing, Lender may, at any time, and without notice to or the consent of Borrower or any party in interest with respect to the Premises or the Note: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation herein; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) accept any additional security; (d) release or otherwise deal with any property, real or personal, including any or all of the Premises, including making partial releases of the Premises; or (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

Section 7.5. RIGHTS CUMULATIVE.

Each right, power or remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Lender, at law or in equity, or under the Code, or under any other agreement, and each and every right, power and remedy of Lender herein set forth or otherwise so existing shall be cumulative to the maximum extent permitted by law and may be exercised from time to time as often and in

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such order as may be deemed expedient by Lender and any such exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Lender in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of Lender to resort thereto at a later date or be construed to be a waiver of any Event of Default under this Instrument or the Note.

Section 7.6. SUBSEQUENT AGREEMENTS.

Any agreement hereafter made by Borrower and Lender pursuant to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

Section 7.7. WAIVER OF APPRAISEMENT, HOMESTEAD, MARSHALING.

Borrower hereby waives to the full extent lawfully allowed the benefit of any homestead, appraisal, valuation, stay and extension laws now or hereafter in force. Borrower hereby waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Premises, or as to require Lender to exhaust its remedies against a specific portion of the Premises before proceeding against the other and does hereby expressly consent to and authorize the sale of the Premises or any part thereof as a single unit or parcel. Borrower also hereby waives any and all rights of reinstatement and redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Premises described herein subsequent to the date of this Instrument, and on behalf of all other persons to the extent permitted by applicable law.

Section 7.8. BUSINESS LOAN REPRESENTATION.

Borrower represents and warrants to Lender that the Loan is a business loan transacted solely for the purpose of carrying on the business of Borrower and not a consumer transaction and that the Premises does not constitute the homestead of Borrower or any of its principals.

Section 7.9. DISHONORED PAYMENTS.

In the event Borrower shall send to Lender two (2) or more checks, or electronic payments in any twelve (12) month period which are not honored by the bank, for any reason, Lender shall have the right to require that all future payments be made by certified check, or other good funds, at Lender's option.

Section 7.10. PLANS AND SPECIFICATIONS.

To the extent that Borrower has plans and specifications and soil tests in its possession, Lender may request the plans and specifications and the soil tests at any time after the occurrence of an Event of Default.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

Section 8.1. EVENTS OF DEFAULT.

In addition to the occurrence of any event designated as an Event of Default hereunder or under any other Loan Document, the occurrence of any of the following shall constitute an event of default under this Instrument ("Event of Default"):

- (a) Borrower or any co-maker, guarantor or surety shall fail to pay any regularly scheduled payment of principal and interest due under the Note within ten (10) days of the due date of such payment, but Lender shall have no obligation to provide notice to Borrower of such failure;
- (b) Borrower or any co-maker, guarantor or surety shall fail to pay principal or interest on the Note when the same becomes due at the stated maturity, or any accelerated payment date or otherwise;
- (c) Borrower shall fail to deposit the Charges with Lender or to pay when due any other Indebtedness prior to the expiration of ten (10) days following the respective due date of such payment, but Lender shall have no obligation to provide notice to Borrower of any such failure;
- (d) THIS SUBSECTION DOES NOT APPLY TO SECTIONS 2.7, 2.9, 2.10, 2.11, 3.1, 9.4 and 10.8 HEREOF. Borrower shall fail to comply with or perform any other term, condition or covenant of this Instrument or any other Loan Document other than as described in subsections (a), (b), (c) and (e) through (k) hereof, inclusive, and, unless a different cure period is provided for (in which case such other cure period shall apply), the continuance of such default for thirty (30) days after written notice by Lender to Borrower of such failure to comply or perform, provided that if Borrower has commenced and is diligently pursuing the cure of such default, such period shall be extended for an additional thirty (30) days;
- (e) Borrower or any maker, guarantor or surety of the Note shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of a petition filed against it in such proceedings, or shall not within sixty (60) days after the filing of such a petition have the same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties, or shall not within sixty (60) days after the

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appointment of a trustee, receiver or liquidator of any material part of its properties without Borrower's consent have such appointment vacated;

- (f) any material certification, representation or warranty made by Borrower herein, in the Note or in any other instrument or certificate now or hereafter given as security for the Note or made in connection with the application for the Loan or given as an inducement to Lender to make the Loan shall be materially false, breached or dishonored;
- (g) Borrower shall be deceased, dissolved, liquidated or go out of existence; or
- (h) any of the Guarantors of the Indebtedness shall be dissolved, liquidated or go out of existence;
- (i) the institution of foreclosure or other proceedings to enforce against the Premises or Borrower any junior mortgage or deed of trust or junior security interest or other lien or encumbrance of any kind upon the Premises or any portion thereof;
- (j) the occurrence of any event in violation of the provisions set forth in Sections 2.7, 2.9, 2.10, 2.11, 3.1, 9.4 or 10.8 hereof; or
- (k) any of the Guarantors shall die and Borrower either (i) has failed to notify Lender of such death within ninety (90) days thereof; or (ii) has failed to provide Lender with an acceptable substitute guarantor, in the sole judgment of Lender, who shall have executed a guaranty agreement and hazardous materials or wastes indemnity agreement in the form of that executed by the Guarantors, before the earlier to occur of (1) one (1) year from the date of such person's death, or (2) the date on which the first distribution of assets has been made from such person's estate to any devisee, heir or other beneficiary.

Section 8.2. LENDER'S RIGHT TO ACCELERATE.

If an Event of Default shall occur, Lender may immediately and without notice to Borrower declare the entire unpaid principal balance of the Note together with all other Indebtedness to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon, any Prepayment Fee under the terms of the Note and all other Indebtedness shall be and become immediately due and payable.

Section 8.3. REMEDIES OF LENDER AND RIGHT TO FORECLOSE.

Upon the occurrence of an Event of Default, Borrower hereby authorizes and fully empowers Lender to foreclose this Instrument by judicial proceedings, by advertisement, or by such other statutory procedures available in the state in which the Premises are located, at the option of Lender, with full authority to sell the Premises at public auction or such other means

permitted by law and convey the same to the purchaser in fee simple, either in one parcel or separate lots and parcels, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal, Prepayment Fee, if any, and interest due on the Note and all other Indebtedness together with all sums of money as Lender shall have expended or advanced pursuant to this Instrument or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including lawful attorneys' fees, with the balance, if any, to be paid to the persons entitled thereto by law.

Section 8.4. RECEIVER.

Upon the occurrence of an Event of Default, Lender shall be entitled as a matter of right without notice and without regard to the solvency or insolvency of Borrower, or the existence of waste of the Premises or the value or adequacy of the security of the Premises, and without giving bond apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the Premises so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Premises and perform the terms of this Instrument and apply the rents, issues, income and profits to the costs and expenses of the receivership, including attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Premises, including payment of taxes on the Premises and payments of premiums of insurance on the Premises and any other rights permitted by law. Borrower does hereby irrevocably consent to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises, or any part thereof, by force, summary proceedings, ejection or otherwise, and remove Borrower or any other person or entity and any personal property therefrom, and may hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Premises, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

Section 8.5. RIGHTS UNDER UNIFORM COMMERCIAL CODE.

In addition to the rights available to a beneficiary under a deed of trust of real property, Lender shall also have all the rights, remedies and recourse available to a secured party under the Code including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Instrument which may be included on the Premises or which may be deemed non realty in a foreclosure of this Instrument or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

Section 8.6. RIGHT TO DISCONTINUE PROCEEDINGS.

In the event Lender shall have proceeded to invoke any right, remedy or recourse permitted under this Instrument and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and in such event Borrower and Lender shall be restored to their former positions with respect to the Indebtedness in which case

this Instrument and all rights, remedies and recourse of Lender shall continue as if such action or exercise of a right had not been invoked.

Section 8.7. WAIVERS.

Borrower also waives the benefit of all laws now existing or that may hereafter be enacted providing for: (i) any appraisal before sale of any portion of the Premises; and (ii) in any way extending the time for the enforcement and collection of the Note or this Instrument or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, valuation, stay, extension or redemption and Borrower, to the extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshaling in the event of foreclosure of the liens hereby created.

ARTICLE 9
HAZARDOUS MATERIALS OR WASTES

Section 9.1. DEFINITIONS.

The term "Hazardous Materials or Wastes" shall mean any hazardous or toxic materials, pollutants, chemicals, wastes, by-products or contaminants, including without limitation asbestos, polychlorinated biphenyls (PCBs), lead, lead paint, petroleum products (including crude oil or any fraction thereof), and any other substance or material for which the use, storage, transportation and disposal of is prohibited, controlled or regulated by any of the Environmental Laws, as hereinafter defined. The term "Environmental Laws" means any federal, state or local laws, ordinances, rules, regulations or policies (whether now existing or hereafter enacted or promulgated) including, without limitation, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, and The Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; or other similar laws, as well as implementing regulations enacted or promulgated to protect the public health, welfare or the environment, including state or local laws, regulations or ordinances, as well as any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments.

Section 9.2. REPRESENTATIONS BY BORROWER.

Borrower hereby represents to Lender that, to the best of Borrower's knowledge after due inquiry, and except as otherwise specifically disclosed in the Phase I Environmental Site Assessment including testing for asbestos prepared by AES Due Diligence, Inc. and dated February 22, 2016 (the "Environmental Inspection"), that: (a) no prior owner, or current or prior tenant, subtenant or other occupant of all or any part of the Premises has used, released or

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transported asbestos or any Hazardous Materials or Wastes on, from or affecting the Premises in any manner that violates the Environmental Laws; (b) no Hazardous Materials or Wastes exist on the Premises or in its soil or groundwater; (c) the Premises does not contain, and has not in the past contained, any asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and/or the environment, and there is no current or potential airborne contamination of the Premises by asbestos fiber including any potential contamination that would be caused by maintenance or tenant finish activities in any building(s) located on the Premises; (d) there are not now nor have there been electrical transformers or other equipment which have dielectric fluid-containing polychlorinated biphenyls (PCBs) located in, on or under the Premises; (e) the Premises has never contained any underground storage tanks; and (f) Borrower has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any local, state or federal governmental agency concerning: (i) the existence of Hazardous Materials or Wastes on the Premises or on adjacent lands; or (ii) the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Hazardous Materials or Wastes onto the Premises or into waters or other lands adjacent to the Premises.

Section 9.3. COVENANTS OF BORROWER.

Borrower hereby covenants to Lender that: (a) Borrower shall: (i) comply and shall cause all occupants of the Premises to comply with all applicable Environmental Laws with respect to the discharge, generation, removal, transportation, storage and handling of Hazardous Materials or Wastes; (ii) remove any Hazardous Materials or Wastes immediately upon discovery of same, in accordance with applicable laws, ordinances and orders of governmental authorities having jurisdiction thereof; (iii) pay or cause to be paid all costs associated with such removal; and (iv) indemnify Lender from and against all losses, claims and costs arising out of the migration of Hazardous Materials or Wastes from or through the Premises onto or under other properties; (b) Borrower shall keep the Premises free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Hazardous Materials or Wastes on the Premises; (c) Borrower shall not install or permit to be installed or to exist in or on the Premises any asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which has been determined to be a hazard to health and/or the environment; and (d) Borrower shall not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of Borrower or any occupant of the Premises, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Hazardous Materials or Wastes onto the Premises or into waters or other lands; and (e) Borrower shall give all notifications and prepare all reports required by Environmental Laws or any other law with respect to Hazardous Materials or Wastes existing on, released from or emitted from the Premises.

Section 9.4. HAZARDOUS MATERIALS OR WASTES EVENTS OF DEFAULT AND REMEDIES.

It shall constitute an Event of Default hereunder and Lender shall be entitled to exercise all remedies available to it hereunder if: (a) any of Borrower's representations contained in Section 9.2 hereof prove to be false, inaccurate or misleading; (b) Borrower shall fail to comply with the covenants contained in Section 9.3 hereof; (c) any Hazardous Materials or Wastes are hereafter found to exist on the Premises or in its soil or groundwater; or (d) any summons, citation, directive, letter or other communication, written or oral, shall be issued by any local, state or federal governmental agency concerning the matters described in Section 9.2(e)(i) and (ii) above. Borrower hereby grants Lender and its employees and agents an irrevocable and non-exclusive license to enter the Premises, subject to rights of tenants, in order to inspect, conduct testing and remove Hazardous Materials or Wastes. All costs of such inspection, testing and removal shall immediately become due and payable to Lender, shall bear interest at the Default Rate, shall be secured by this Instrument and shall constitute additional Indebtedness.

Section 9.5. INDEMNIFICATION.

Borrower hereby agrees to defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns ("Indemnified Parties") from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims or remediation of contamination) incurred by the Indemnified Parties as a result of or in connection with the presence or removal of Hazardous Materials or Wastes or as a result of or in connection with activities prohibited under this Article. Borrower shall bear, pay and discharge, as and when the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise, against the Indemnified Parties, shall hold the Indemnified Parties harmless against all claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this Article, except to the extent arising by reason of the gross negligence or willful misconduct of any of the Indemnified Parties or activities first occurring after title to the Premises has passed to Lender by foreclosure or delivery of a deed in lieu of foreclosure. This indemnification shall remain in full force and effect and shall survive the repayment of the Indebtedness and the satisfaction of the documents securing the same, as well as the exercise of any remedy by Lender hereunder or under the Loan Documents.

Section 9.6. LOSS OF VALUE.

Borrower hereby assures Lender that Lender will not suffer any actual loss due to diminution of value of the Premises, whether during the term hereof or thereafter, due to Hazardous Materials or Wastes upon the Premises, except for those Borrower proves were first

introduced onto the Premises after title to the Premises has passed to Lender by foreclosure or otherwise, and Borrower will, upon demand, reimburse Lender for any such loss of value.

ARTICLE 10
MISCELLANEOUS

Section 10.1. RELEASE OF MORTGAGE.

When all Indebtedness has been paid, this Instrument and all assignments herein contained shall, except as otherwise provided herein, terminate and shall be released by Lender at Borrower's expense.

Section 10.2. CHOICE OF LAW.

This Instrument is made and executed under the laws of the State of Utah and is intended to be governed by and construed and interpreted in accordance with the laws of said State.

Section 10.3. SUCCESSORS AND ASSIGNS.

This Instrument and each and every covenant, agreement and other provision hereof shall be binding upon Borrower and its successors and assigns, including, without limitation each and every person or entity that may, from time to time, be record owner of the Premises and any person or entity, other than Lender, having an interest therein, shall run with the land and shall inure to the benefit of Lender and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is a party to this Instrument. Nothing in this section shall be construed to constitute consent by Lender to assignment by Borrower.

Section 10.4. PARTIAL INVALIDITY.

All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Instrument shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Instrument shall in no way be affected thereby.

Section 10.5. CAPTIONS AND HEADINGS.

The captions and headings of the various articles and sections of this Instrument are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 10.6. NOTICES.

Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and: (a) mailed by certified mail, return receipt requested; (b) sent by an overnight carrier which provides for a return receipt; or (c) sent by email followed up by mailing of such notice by either of the methods set forth in (a) and (b) above on the day of sending such email or the next succeeding business day. Any such notice shall be sent to the respective party's address as set forth on page 1 of this Instrument or to such other address as such party may, by notice in writing given in compliance with this section, designate as its address. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail, one (1) day after the sending thereof by overnight carrier, and on the same day as the sending of an email pursuant to the terms hereof.

Section 10.7. BUILDING USE.

During the entire term of the Note and this Instrument, Borrower agrees not to convert the Premises to a condominium or cooperative of any kind or to any use other than as an apartment building. In that connection, Borrower covenants that the sale of units and/or recording of condominium or cooperative documents on the Premises or any part thereof shall constitute an Event of Default hereunder.

Section 10.8. MANAGEMENT OF THE PREMISES.

Borrower acknowledges that the successful management of the Premises is of critical importance to Lender and a primary inducement in the making of the Loan. In the event management becomes unsatisfactory, Lender shall notify Borrower of the same and Borrower shall, within thirty (30) days of such notice, correct any management deficiencies. Failure to so correct shall constitute an Event of Default hereunder.

Section 10.9. AMENDMENT/MODIFICATION.

Amendment to, waiver of or modification of any provision of this Instrument must be made in writing. No oral waiver, amendment, or modification may be implied.

Section 10.10. REPRESENTATIONS OF BORROWER.

Borrower affirmatively represents and warrants that the written terms of the Loan Documents, accurately reflect the understanding of Borrower, as to all matters addressed therein, and Borrower further represents and warrants that there are no other agreements or understandings, written or oral, which exist between Borrower and Lender relating to the matters addressed in said documents.

Section 10.11. LENDER'S EXPENSE.

Should Lender make any payments hereunder or under the Note or under any of the other Loan Documents or incur any liability, loss or damage under or by reason of this Instrument, the Note or any of the other Loan Documents, or in the defense of any claims or demands, the amount thereof, and all costs and expenses, including all filing, recording, and title fees and any other expenses relating to the Loan, including without limitation filing fees for UCC continuation statements and any expense involving modification thereto, attorneys' fees, Lender's fees, and any and all costs and expenses incurred in connection with making, performing, or collecting the Indebtedness or exercising any of Lender's rights under the Note, this Instrument or any other Loan Documents, including attorneys' fees, the cost of appraisals and the cost of any environmental inspections in connection therewith, and all claims for brokerage and finder's fees which may be made in connection with the making of the Loan, together with interest thereon, at the Default Rate, shall become part of the Indebtedness and shall be secured by this Instrument and the other Loan Documents and Borrower hereby agrees to reimburse Lender therefor immediately upon demand. Such sums, costs and expenses shall be, until so paid, part of the Indebtedness and Lender shall be entitled, to the extent permitted by law, to receive and retain the full amount of the Indebtedness in any action for redemption by Borrower, for an accounting for the proceeds of a foreclosure sale or of insurance proceeds or for apportionment of an eminent domain damage award.

Section 10.12. LENDER'S RIGHT TO COUNSEL.

If Lender retains attorneys to enforce any of the terms hereof or the Note or of any of the other Loan Documents or because of the breach by Borrower of any of the terms hereof or of any of the Loan Documents, or for the recovery of any Indebtedness secured hereby or by any of the other Loan Documents, Borrower shall pay, and does hereby agree to pay Lender's attorneys' fees and all costs and expenses, whether or not an action is actually commenced and the right to such attorneys' fees and all costs and expenses shall be deemed to have accrued on the date such attorneys are retained, shall include fees and costs in connection with litigation, arbitration, mediation, bankruptcy and/or administrative proceedings, and shall be enforceable whether or not such action is prosecuted to judgment and shall include all appeals. Attorneys' fees and expenses shall for purposes of this Instrument include all paralegal, electronic research, legal specialists and all other costs in connection with that performance of Lender's attorneys. The term "attorney's fees" as used in this Instrument shall mean reasonable attorney's fees actually incurred, without any statutory presumption.

If Lender is, by reason of being the holder of this Instrument, made a party defendant in any litigation or other proceedings concerning this Instrument or the Premises or any part thereof or therein, or the construction, maintenance, operation or the occupancy or use thereof by Borrower, then Borrower shall indemnify, defend and hold Lender harmless from and against all liability by reason of said litigation or other proceedings, including attorneys' fees and all costs

and expenses incurred by Lender in any such litigation or other proceedings, whether or not any such litigation or other proceedings is prosecuted to judgment or other determination.

Section 10.13. OTHER REPRESENTATIONS AND WARRANTIES.

All statements contained in any loan application, certificate or other instrument delivered by or on behalf of Borrower to Lender or Lender's representatives in connection with the Loan shall constitute representations and warranties made by Borrower hereunder. Such representations and warranties made hereunder and thereunder shall survive the delivery of this Instrument, and any misrepresentations thereunder shall be deemed as misrepresentations hereunder.

Section 10.14. LIMITATION OF INTEREST

It is the intent of Borrower and Lender in the execution of this Instrument and the Note and all other Loan Documents securing the Note to contract in strict compliance with the usury laws of the State of Utah governing the Note. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained herein or in the Note or in any Loan Document shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Utah. Borrower, or any guarantors, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Utah and the provisions of this section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. If, from any circumstances whatsoever fulfillment of any provision of the Note, this Instrument or any Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit on interest presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then Lender may, at its option reduce the obligations to be fulfilled to such limit on interest, or apply the amount that would exceed such limit on interest to the reduction of the outstanding principal balance of the Note, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a prepayment without a fee, so that in no event shall any exaction be possible under the Note that is in excess of the applicable limit on interest.

Section 10.15. TIME IS OF THE ESSENCE.

Borrower agrees that time is of the essence with respect to all of the covenants, agreements and representations under this Instrument.

Section 10.16. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS.

All representations, warranties and covenants contained herein or in any other Loan Document, executed by Borrower in connection herewith shall survive the delivery of the Note, this Instrument and all other Loan Documents, executed in connection herewith and the provisions hereof shall continue to inure to the benefit of Lender, its successors and assigns.

Section 10.17. WAIVER OF JURY TRIAL.

LENDER, BY ACCEPTANCE OF THIS INSTRUMENT, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN ANY ACTION, COUNTERCLAIM OR PROCEEDING OF ANY KIND OR NATURE, IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED, ARISING OUT OF OR IN CONNECTION WITH THE LOAN, OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN BORROWER AND LENDER OF ANY KIND OR NATURE. EITHER LENDER OR BORROWER MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO WAIVER OF THE RIGHT TO A JURY TRIAL.

Section 10.18. MINIMUM REQUIREMENTS.

Borrower recognizes that the requirements imposed upon Borrower hereunder, including, without limitation, insurance requirements, are minimum requirements as determined by Lender and do not constitute a representation that the requirements are complete or adequate. Borrower understands that it is Borrower's duty and responsibility to act prudently and responsibly at all times for Borrower's protection and for the protection of the Premises.

Section 10.19. SUBSTITUTION OF TRUSTEE.

Lender may remove Trustee at any time or from time to time, with or without cause, and appoint a successor trustee, and upon such appointment, all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the Premises is located, which appointment may be executed by any authorized agent of Lender or in any other manner permitted by applicable law.

ARTICLE 11
STATE SPECIFIC PROVISIONS

Section 11.1. INCONSISTENCIES.

In the event of any inconsistencies between the terms and conditions of this Article 11 of this Instrument and any other terms of this Instrument, the terms and conditions of this Article 11 shall control and be binding.

Section 11.2. POWER OF SALE.

Time is of the essence hereof. Upon the occurrence of an Event of Default, Lender shall have the option to the extent permitted by law to declare the Indebtedness immediately due and payable and Lender may execute or cause Trustee to execute a written notice of default and of election to cause the Premises to be sold to satisfy the obligations hereof (the "Notice of Default"), and Trustee shall file the Notice of Default for record in the office of the county recorder in each county wherein the Premises or some part or parcel thereof is situated. Lender shall also deposit with Trustee the Note and all other documents evidencing the Indebtedness.

After the lapse of such time as may then be required by law following the recordation of the Notice of Default, any Notice of Default and notice of sale (the "Notice of Sale") having been given, as then required by law, Trustee, without demand on Borrower, shall sell the Premises on the date and at the time and place designated in the Notice of Sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Borrower to direct the order in which such property, or consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof, by written notice or oral postponement, by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the time designated in the Notice of Sale, notice thereof shall be given in the same manner as the original Notice of Sale. Trustee shall execute and deliver to the purchaser its deed conveying the Premises so sold, but without any covenant or warranty, express or implied. To the extent permitted by applicable law, the recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expense of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (b) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of interest applicable under the Note secured hereby from date of expenditure; (d) all other sums then secured hereby; and (e) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

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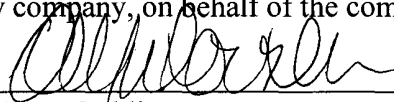
Borrower agrees to surrender possession of the Premises to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by the Borrower.

Upon the occurrence of any Event of Default, Lender shall have the option to the extent permitted by law to declare the Indebtedness immediately due and payable and foreclose this Instrument in the manner provided by law for the foreclosure of mortgages on real property and Lender shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

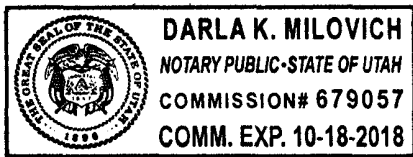
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STATE OF UTAH)
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 26 day of April, 2016, by Ned Skanchy, as Manager of Revilo, LLC, a Utah limited liability company, which is a General Partner of Bi-Skan, Ltd., a Utah limited partnership, which is the Sole Member of AOS APARTMENTS, LLC, a Utah limited liability company, on behalf of the company.



Notary Public



Print Name: Darla K. Milovich

My Commission Expires: 10/18/18

EXHIBIT "A"
LEGAL DESCRIPTION

Beginning at the Southwest corner of Lot 19, Block 1-A, Five Acre Plat "A", Big Field Survey, on file with the office of Salt Lake City Engineering, said point also being on the East right-of-way line of 1200 East Street, said point also being North 00°01'00" West along the monument line a distance of 606.06 feet and North 89°51'33" East 19.04 feet from the street monument at the intersection of 1200 East Street and 2100 South Street and running thence North 00°00'45" West along said right-of-way line a distance of 287.26 feet to the Northwest corner of said Lot 19; thence North 89°51'47" East 161.80 feet; thence South 00°08'23" East 45.02 feet; thence North 89°51'45" East 61.97 feet; thence South 00°11'19" East 192.20 feet; thence South 89°51'36" West 62.13 feet; thence South 00°08'23" East 50.03 feet to the South line of said Lot 19; thence South 89°51'33" West along the South line of said Lot 19 a distance of 162.43 feet to the point of beginning.