

12958508
3/29/2019 11:17:00 AM \$50.00
Book - 10765 Pg - 669-689
RASHELLE HOBBS
Recorder, Salt Lake County, UT
NORTH AMERICAN TITLE LLC
BY: eCASH, DEPUTY - EF 21 P.

**Recording Requested By and
When Recorded Mail To:**

HomeStreet Bank
601 Union Street, Suite 2000
Seattle, Washington 98101-2326
Attention: Commercial Real Estate

~~21-12-107-009~~
40902-18-10086

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

This document serves as a Fixture Filing under the Utah Uniform Commercial Code.

Trustor is the record owner of the Property.

Trustor's Organizational Identification Number is 11044718-0160.

This Deed of Trust constitutes a "Construction Mortgage" within the meaning of *Utah Code Annotated* Section 70A-9a-334(8) or any successor statute. The proceeds of the loan secured by this Deed of Trust are to be used by Trustor in part for the purpose of funding the construction and development or rehabilitation of the Property and Improvements described herein and are to be disbursed in accordance with the provisions of the Loan Documents (as hereinafter defined).



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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of March 25, 2019, by **RIVER PARK COMMONS, LLC**, a Utah limited liability company ("**Trustor**"), as Trustor, whose mailing address is 215 North Redwood Road, No. 8, North Salt Lake, Utah 84054; to **NORTH AMERICAN TITLE, LLC** ("**Trustee**"), as Trustee, whose mailing address is 290 South Main Street, Bountiful, Utah 84010; for the benefit of **HOMESTREET BANK**, a Washington state chartered commercial bank ("**Lender**"), as Beneficiary, whose mailing address is 601 Union Street, Suite 2000, Seattle, Washington 98101-2326, Attention: Commercial Real Estate.

Capitalized terms used but not defined in this Deed of Trust are defined in the Construction and Term Loan Agreement ("**Loan Agreement**") between Lender and Trustor of even date herewith.

In consideration of the loan ("**Loan**") evidenced by the Note described below, Trustor hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Trustor's present and future estate, right, title, claim, and interest, either in law or in equity, in and to the following property ("**Property**"):

(a) The real property described on Exhibit A, all rights to the alleys, streets and roads adjoining or abutting the real property, all present and future easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, water, water rights and water stock, and all other rights, hereditaments, privileges, and appurtenances now or hereafter belonging or in any way appertaining to such real property ("**Realty**");

(b) All present and future buildings, improvements and tenements located on the Realty ("**Improvements**");

(c) All present and future fixtures and articles of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Realty and Improvements (whether such items are leased, owned, or subject to any title-retaining or security instrument), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposers, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; and all shrubbery and plants. All such items shall be deemed part of the Realty and not severable wholly or in part without material injury to the freehold;

(d) All present and future rents, revenues, issues, profits and income from the Realty or the Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty and Improvements, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements;

(e) All present and future tangible personal property ("**Personal Property**") used in connection with the ownership, development, operation or maintenance of the Realty and Improvements, including without limitation all furniture, furnishings, equipment, supplies and other goods, wherever located, whether in the possession of Trustor, warehousemen, bailee, or any other person;

(f) All present and future intangible personal property used in connection with the ownership, development, operation or maintenance of the Realty, Improvements, and Personal Property, including without limitation, all permits, licenses and franchises, contract rights (including without limitation architectural, engineering, consulting, and management contracts), accounts receivable, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles, business records and the exclusive right to the use of trade names;

(g) All present and future materials, supplies, and other goods, wherever located, whether in the possession of Trustor, warehouseman, bailee, or any other person, purchased for use in the construction, operation or furnishing of the Improvements, together with all documents, contract rights, and general intangibles relating thereto;

(h) All present or future site plans, plats, architectural plans and specifications, work drawings, surveys, engineering reports, test borings, market surveys, and other work products relating to the Realty and Improvements;

(i) All present or future construction contracts relating to the Improvements, together with all performance, payment, completion or other surety bonds in connection with or related to any such construction contracts which are transferable by Trustor;

(j) All present and future contracts and policies of insurance which insure any buildings, structures or improvements on the Realty, or any fixtures or Personal Property thereon, against casualty and theft, and all monies and proceeds and rights thereto which may become payable by virtue of any insurance contracts or policies;

(k) All claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents of title, general intangibles, and business records;

(l) All present and future monetary deposits to any city, county, public body or agency, irrigation, sewer or water district or company, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Realty or the Improvements.

(m) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "**Governmental**

Agency") or (ii) any insurance or utility company relating to any or all of the Realty or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Realty;

(n) All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Trustor with respect to the Property or upon any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

(o) All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including without limitation all insurance proceeds and condemnation awards; and

(p) All products and proceeds of the foregoing.

TO SECURE THE FOLLOWING (collectively the "**Secured Obligations**"):

(a) Payment of the sum of **Eight Million Nine Hundred Thousand and 00/100 Dollars (\$8,900,000.00)**, or so much thereof as may be advanced, with interest thereon, according to the terms and provisions of a promissory note ("**Note**") of even date, made by Trustor and payable to Lender, including any and all modifications, extensions, renewals and replacements thereof.

(b) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

(c) Payment of all other sums which are or which may become owing under the Loan Documents or which may be advanced by Lender pursuant to the Loan Documents; and

(d) Payment and performance of the other covenants and agreements of Trustor contained in the Loan Agreement and the other Loan Documents; and

(e) Payment and performance of any future obligations of Trustor or any Affiliate of Trustor to Lender if the documentation evidencing such future obligation expressly provides that it is secured by this Deed of Trust.

As used in this Deed of Trust, the term "**Loan Documents**" means the Note, the Loan Agreement, this Deed of Trust and all related documents and instruments, and any and all modifications, extensions, renewals and replacements thereof; provided, however, that notwithstanding any other provision of this Deed of Trust, the Loan Agreement or any other Loan Document, this Deed of Trust does not secure any of Trustor's obligations under the Indemnity Agreement nor any Guarantor's obligations under the Guaranty.

The Indemnity Agreement is one of the Loan Documents, but this Deed of Trust does not secure the obligations of Trustor or Guarantor under the Indemnity Agreement.

The Secured Obligations may be indexed, adjusted, renewed or renegotiated.

TRUSTOR REPRESENTS, WARRANTIES, COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I.
TITLE AND USE**

1.1 Warranty of Title. Trustor covenants and agrees that: (i) Trustor is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Property, (ii) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's title insurance policy insuring this Deed of Trust or exceptions otherwise approved in writing by Lender ("**Permitted Exceptions**"), (iii) no other liens or encumbrances, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Trustor without the prior written consent of Lender, (iv) no default on the part of Trustor or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to Lender, and none of them have been or will be modified by Trustor without Lender's prior written consent, (vi) Trustor shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Trustor from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may request, and (viii) Trustor shall forever warrant and defend the Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions. None of the Permitted Exceptions, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Deed of Trust and the Loan Documents, materially and adversely affect the value of the Property, impair the use or operations of the Property or impair Trustor's ability to pay its obligations in a timely manner.

1.2 Business Use. Trustor warrants that the Loan proceeds shall be used exclusively for commercial, business or investment purposes.

**ARTICLE II.
TRUSTOR'S COVENANTS.**

2.1 Payment and Performance of Secured Obligations. Trustor shall pay when due all sums which are now or which may become owing under the Note, and shall pay and perform all other Secured Obligations in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Trustor shall pay when due directly to the payee thereof all taxes and assessments (including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Trustor shall promptly furnish to Lender all notices of amounts due under this subsection and all receipts evidencing such payments.

(b) Utilities. Trustor shall pay when due all utility charges and assessments for services furnished the Property.

(c) Labor and Materials. Trustor shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.

(d) Liens and Charges. Trustor shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property.

(e) Taxes, Assessments and Other Charges Imposed on Lender. If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) which subjects Lender to any increase in any tax (except federal, state or local income taxes), assessments, or other charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Trustor shall pay such increased amount to Lender on demand; provided that if any such payment would be unlawful, Lender may declare all accrued interest and the entire principal balance of the Note immediately due and payable.

(f) Right to Contest. Notwithstanding anything set forth in this Section 2.2, so long as no Event of Default shall occur hereunder, Trustor shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, in which event Trustor, upon written notice to Lender, may defer payment of any such lien, encumbrance or other charge, so long as (i) Trustor shall have provided Lender with evidence satisfactory to Lender that such proceedings shall operate to prevent the sale of the Property or any portion thereof, or the imposition of any penalties on Trustor or the Property; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; (iii) before the date such lien, encumbrance or other charge becomes delinquent, Trustor shall provide Lender with such security as Lender may require to insure payment thereof and prevent any forfeiture or loss of the Property or any part thereof; and (iv) on a final determination of such contest, which is not appealable or is not being appealed, Trustor shall pay the amount of the lien, encumbrance or other charge if and when due, and prior to the imposition of any penalties or delinquent interest.

2.3 Insurance Provisions.

(a) Required Coverage. Trustor shall keep the insurance coverage required by the terms of the Loan Agreement in full force and effect.

(b) Security. As security for the Secured Obligations, Trustor hereby assigns to Lender and grants Lender a security interest in all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Application of Proceeds. The provisions of the Loan Agreement providing for the application of insurance proceeds are incorporated by this reference.

2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Trustor shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair

promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. Except as specifically permitted under the Loan Agreement, none of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor shall any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability which is owned by Trustor free and clear of any lien or security interest.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Trustor's compliance with this Section 2.4.

2.5 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Trustor shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Trustor shall furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations. This Deed of Trust shall constitute a first lien on all such substitute parking facilities.

2.6 Use of Property. Trustor shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Lender has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

2.7 Condemnation. The provisions of the Loan Agreement regarding condemnation actions and the application of condemnation proceeds are incorporated by this reference.

2.8 Protection of Lender's Security. Trustor shall give notice to Lender of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Lender or Trustee therein, or the rights or remedies of Lender or Trustee under the Loan Documents. If any such action or proceeding is commenced, or Trustor fails to perform any obligation under the Loan Documents, Lender or Trustee may, at their option, make any appearances, disburse any sums, make any entries upon the Property, and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Trustor's failure to perform its obligations under the Loan Documents (without waiving such default by Trustor), or (iii) otherwise protect Lender's or Trustee's interests. Trustor shall pay all losses, damages, fees, costs, and expenses incurred by Lender and Trustee in taking such actions, including without limitation reasonable legal fees.

2.9 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender and Trustee pursuant to Section 2.8 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Trustor secured by this Deed of Trust. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the default rate under the Note, or the maximum rate permitted by law.

2.10 Condominium Declaration. Trustor hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Property to the Chapter 8 of Title 57 of the *Utah Annotated Code* (the Utah Condominium Ownership Act), or any other law later enacted or effective related to condominiums, without Lender's prior written consent and any attempt by Trustor to do so shall be null and void and at Lender's option, shall be an Event of Default under this Deed of Trust.

ARTICLE III. RESERVES.

3.1 Deposits. If the Conversion Conditions are satisfied and the Maturity Date of the Loan is extended to the Term Loan Maturity Date, after the Conversion Date, at the time of making each monthly installment payment under the Note, Trustor shall deposit with Lender an amount determined by Lender to be sufficient (when added to the monthly deposits described herein), to pay (i) the next due installment of taxes and special assessments on the Property (collectively, "**Taxes**") at least one (1) month prior to the due date or the delinquency date thereof (as Lender shall determine), and (ii) the next due annual premiums ("**Premiums**") on insurance policies required under the Loan Agreement at least one (1) month prior to the due date thereof. Lender may require Trustor to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Trustor or the Property as Lender reasonably deems necessary to protect Lender's interests ("**Other Impositions**" and together with Taxes and Premiums, the "**Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Trustor shall promptly deliver to Lender all bills and notices with respect to any Impositions. Lender shall not be required to pay Trustor any interest, earnings or profits on any sums deposited with Lender. All sums deposited with Lender under this Section 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay the Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Trustor the remaining balance of any deposits then held by Lender.

3.3 Adjustments to Deposits. If the total deposits held by Lender exceed the amount deemed necessary by Lender to provide for the payment of Impositions, provided there is no Default or Event of Default, such excess shall be credited by Lender on the next due installment or installments of such deposits. If at any time the total deposits held by Lender are less than the amount deemed necessary by Lender to provide for the payment of Impositions, Trustor shall promptly deposit the deficiency with Lender after receipt of written demand from Lender.

**ARTICLE IV.
RESTRICTIONS ON TRANSFER OR ENCUMBRANCE.**

The Loan Agreement contains certain restrictions on any transfer or encumbrance of the Property, any portion thereof or any interest therein, and on any direct or indirect transfer or encumbrance of direct or indirect ownership interests in Trustor. Those provisions are incorporated by this reference. The occurrence of any Transfer or attempted Transfer not permitted under the Loan Agreement shall be an immediate Event of Default whereupon the Secured Obligations shall be immediately due and payable in full without notice or demand from Lender.

**ARTICLE V.
UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

5.1 Grant of Security Interest. This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (a) any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and (b) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Trustor as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property, any and all such other property constituting "Property" for purposes of this Deed of Trust. Trustor hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Trustor and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Realty.

5.2 Status of Trustor; Financing Statements. Trustor's exact legal name is correctly set forth on the signature page of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type specified in the introductory paragraph of this Deed of Trust. If Trustor is a registered entity, Trustor is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor will not cause or permit any change to be made in its name, identity or corporate, company or partnership structure unless the Trustor shall have notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of further perfecting or protecting the lien and security interest of Lender in the Property. Trustor's principal place of business and chief executive office, and the place where Trustor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Property, has been for the preceding four months (or less if for the entire existence of Trustor) and will continue to be the address of Trustor set forth in the first paragraph of this Deed of Trust (unless Trustor notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). If Trustor is an individual, Trustor's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Trustor set forth at the end of this Deed of Trust (unless Trustor notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). Trustor's organizational identification number, if any, assigned by the state of incorporation or organization is 11044718-0160. Trustor shall promptly notify Lender of any change of its organizational

identification number. If Trustor does not now have an organizational identification number and later obtains one, Trustor shall promptly notify Lender of such organizational identification number. Trustor agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. Trustor hereby authorizes Lender (and Lender's representatives and agents) to file financing statements (and amendments thereto) relating to the Property. The form and substance of any financing statement filed with respect to this Deed of Trust shall be as Lender, in its sole discretion, may determine. Trustor shall pay all costs of filing such financing statements and any extensions, continuations, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements which Lender may require.

5.3 Lender's Rights and Remedies. With respect to the Property subject to the foregoing security interest, Lender shall have all the rights and remedies (i) of a secured party under Article 9a of the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Trustor shall assemble any items of personal property and make them available to Lender at the Realty. Lender shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Lender may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* Section 57-1-30 or other applicable law.

ARTICLE VI. ASSIGNMENT OF RENTS AND LEASES

6.1 Assignment of Rents and Leases. As security for the Secured Obligations, Trustor assigns and transfers to Lender and grants Lender a security interest in and to all right, title and interest of Trustor in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property, and any and all modifications, extensions, renewals and replacements thereof ("**Leases**"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits and revenues ("**Rents**") now due or which may become due or to which Trustor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages and all rights to and proceeds of rental loss or business interruption insurance.

6.2 Collection of Rents. Prior to any Event of Default hereunder, Trustor shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Lender and Trustor, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the

terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Trustor under the Leases, and fourth to the Secured Obligations, with the balance, if any, to the account of Trustor provided there is no Event of Default. Upon delivery of written notice by Lender to Trustor of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Trustor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender on Lender's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of an Event of Default by Trustor. Trustor hereby authorizes Lender as Trustor's attorney-in-fact to make such direction to tenants and occupants upon Trustor's failure to do so as required herein. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Trustor. Lender may exercise, in Lender's or Trustor's name, all rights and remedies available to Trustor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Trustor's obligations under any of the Leases.

6.3 Trustor's Representations and Warranties. Trustor hereby represents and warrants to Lender that Trustor has not executed and will not execute any other assignment of said Leases or Rents, and Trustor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article VI. Trustor shall execute and deliver to Lender such further assignments of rents and leases of the Property as Lender may from time to time request. Trustor represents, warrants, and covenants that (a) Trustor is the absolute owner of all Leases and Rents, with full right and title to assign the same; (b) all existing Leases are valid, in full force and effect, and have not been modified or amended, except as disclosed in writing to Lender; (c) there is no outstanding assignment or pledge of any Leases or Rents; (d) there are no existing defaults under any Leases on the part of any party thereto, except as disclosed in writing to Lender; (e) no Rents have been discounted, released, waived, compromised, or otherwise discharged; (f) all tenants under the Leases are in occupancy, paying rent on fully executed Leases and carrying on their business with all tenant improvements fully completed except as disclosed in writing to Lender; (g) no existing Lease contains any provision permitting prepayment of more than one (1) month's rent in advance.

6.4 Lender in Possession; Appointment of Receiver. Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Trustor could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default hereunder, Trustor hereby irrevocably consents and agrees that Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a custodial receiver or

general receiver with power of sale. Said receiver may serve without bond, shall have the usual powers and duties of receivers in like or similar cases, all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents, and, in the case of a general receiver, a right to sell the Property. Employment by Lender shall not disqualify a person from serving as receiver. The receiver shall be entitled to receive a reasonable fee for all its services rendered in connection with the receivership.

6.5 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Trustor of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor under the Leases, and then to the Secured Obligations. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article.

6.6 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Trustor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the Default Rate.

6.7 Lender Not Mortgagee in Possession. Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

6.8 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

6.9 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Property, Lender is not and shall not be deemed to be: (a) responsible for any waste committed by tenants or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; (b) responsible for any loss sustained by Trustor resulting from Lender's failure to lease the Property or from any other act or omission of Lender in managing the Property or administering the Leases; or (c) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it. All risk of loss with respect to the Property is borne exclusively by Trustor and Lender shall have no responsibility for any decline in the value of the Property, for any failure by Trustor to maintain insurance coverage required under the Loan Agreement, for any inadequacy of the proceeds of any required insurance coverage or for any risk not insured against or not required to be insured against hereunder.

6.10 Indemnity. Trustor shall indemnify, defend with counsel selected by Lender in its sole discretion, and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, damages, costs and expenses, including, without limitation, attorneys' fees and costs, to which Lender may be exposed or which Lender may incur arising out of or resulting from this assignment of Leases and Rents, including, without limitation, claims or demands for security deposits from tenants deposited with Trustor, and all claims or demands whatsoever asserted against Lender to satisfy any

obligations of the landlord under the Leases. This agreement by Trustor to indemnify Lender shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and or reconveyance of this Deed of Trust.

ARTICLE VII. EVENTS OF DEFAULT.

7.1 Events of Default. The occurrence of any Event of Default under the Loan Agreement shall constitute an Event of Default hereunder.

7.2 Remedies. Upon any Event of Default, Lender may, at its option and without notice to or demand upon Trustor, exercise any one or more of the following actions:

- (a) Declare all the Secured Obligations immediately due and payable.
- (b) Bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents.
- (c) Foreclose this Deed of Trust as a mortgage.
- (d) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (e) Elect to exercise its rights with respect to the Leases and the Rents.
- (f) Exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents.
- (g) Exercise any other right or remedy available under law or in equity.

7.3 Exercise of Power of Sale. Trustee, if and as directed by Lender, as Beneficiary, shall have all of the rights and may exercise all of the powers set forth in applicable law of the State of Utah, including those powers set forth in *Utah Code Annotated* Section 57-1-29 to 57-1-39 or any successor provision of law. Trustee may sell the Property in its entirety or in parcels, and by one or by several sales, as deemed appropriate by Trustee in its sole and absolute discretion (but subject to Trustor's statutory right under *Utah Code Annotated* Section 57-1-27 to direct the order in which the property being sold, if consisting of several known lots or parcels, shall be sold). Trustee shall receive and apply the proceeds from the sale of the Property, or any portion thereof, in accordance with *Utah Code Annotated* Section 57-1-29 or any successor provision of law. Before any foreclosure sale, Lender or Trustee shall give such notice of default and election to sell as may be required by law. After the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, Trustee or the attorney for the Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Lender shall have any obligation to make demand on Trustor before any foreclosure sale. From time to time in accordance with then-applicable law, Trustee may, and in any event at Lender's request shall, postpone any foreclosure sale by public announcement at the time and place noticed for that sale. At any foreclosure sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law),

payable at the time of sale or upon such other terms as described in the Notice of Sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, expressed or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any foreclosure sale, shall be conclusive and *prima facie* evidence of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited therein. Any Person, including Trustee or Lender, may purchase at such sale. Upon any sale made under or by virtue of this Section 7.3, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Trust Estate, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* Section 57-1-28(1)(b) or other applicable law. In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting upon the Secured Obligations of Trustor secured by this D eed of Trust such credit bid amount. Lender, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

7.4 Judicial Action. Lender and Trustee, if and as directed by Lender, shall have the right to bring an action in any court of competent jurisdiction for foreclosure of this Deed of Trust as a mortgage and a deficiency judgment as provided by law, or for specific enforcement of any of the covenants or agreements of this Deed of Trust.

7.5 Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any sale, and Lender may commence suit to collect such deficiency in accordance with *Utah Code Annotated* Section 57-1-32 or other applicable law.

7.6 Waiver of Order of Sale, Marshaling and Other Matters. Subject to applicable law, Lender shall have the right to determine the order in which any or all portions of the secured indebtedness are satisfied from the proceeds realized upon the exercise of any remedies provided herein. To the extent permitted by applicable law, Trustor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof and waives any and all right to require marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. To the extent allowed by law, Trustor waives (i) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (ii) all rights of valuation, appraisal, stay of execution, reinstatement and redemption laws in the event of foreclosure of the liens hereby created, (iii) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State where the Property is located pertaining to the rights and remedies of sureties, and (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

7.7 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.8 Expenses During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care,

preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the greater of the default rate under the Note, or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

7.9 Foreclosure Subject to Tenancies. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

7.10 Evasion of Prepayment Terms. If any Event of Default has occurred, a tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or non-judicial foreclosure sale of the Property by Trustor, or anyone on behalf of Trustor, shall constitute an evasion of any prepayment terms of the Note, if any, and shall constitute a voluntary prepayment thereunder, and any such tender shall include any prepayment premium required under the Note, if any.

7.11 Lender's and Trustee's Expenses. Trustor shall pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Trustor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the greater of the default rate under the Note, or the maximum rate permitted by law.

7.12 Request for Notice. Lender hereby requests, pursuant to *Utah Code Annotated* 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the initial paragraph of this Deed of Trust.

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

7.14 Liability of Trustee. Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Loan Documents or the description, value or status of title to the Property. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for its willful misconduct or gross negligence. Subject to the limitations of *Utah Code Annotated* Section 57-1-21.5(1), the powers and duties of Trustee hereunder may be exercised through such attorneys, employees, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful misconduct of such attorney, employee agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney or agent of Lender, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Property following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Lender.

**ARTICLE VIII.
GENERAL PROVISIONS**

8.1 No Offset. Trustor's obligation to timely pay and perform all obligations under the Note, the Loan Agreement, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Trustor or any guarantor may have or claim against Lender or any other person or entity.

8.2 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) interest payable on advances made to protect the security of this Deed of Trust; (c) principal of such advances; (d) amounts payable to Lender by Trustor under Section 3 for reserves; (e) interest and late charges payable on the Note; (f) principal of the Note; and (g) any other Secured Obligations in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Deed of Trust.

8.3 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

8.4 Successor Trustee. In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a Substitution of Trustee meeting the requirements of *Utah Code Annotated* Section 57-1-22(2). Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. The power of appointment of a successor Trustee may be exercised as often as and whenever Lender may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Deed or Deeds of Appointment the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Property and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder.

8.5 Lender's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Lender's rights or remedies, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the

Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Trustor shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Trustor's request.

8.6 Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Note or any other indebtedness secured thereby.

8.7 Limitation on Interest and Charges. The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, the interest, fee or charge shall be reduced by the excess and any excess amounts already collected from Trustor shall be refunded. Lender may refund such excess either by treating the excess as a prepayment of principal under the Note or by making a direct payment to Trustor. If Lender elects to treat the excess as a prepayment of principal, Trustor shall not be obligated to pay any prepayment premium required under the Note. The provisions of this paragraph shall control over any inconsistent provision in the Loan Documents.

8.8 Additional Documents; Power of Attorney. Trustor, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Trustor shall pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

8.9 Waiver of Statute of Limitations. To the full extent Trustor may do so, Trustor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

8.10 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default shall constitute a waiver of any other default or of any similar default in the future. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of the Loan Documents in another instance. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under Sections 2.3 and 2.7 hereof operate to cure or waive Trustor's default in payment of sums secured by this Deed of Trust.

8.11 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

8.12 Notice. Any notice to Trustor under this Deed of Trust shall be given in accordance with the notice provisions in the Loan Agreement.

8.13 Governing Law; Severability; Captions. This Deed of Trust shall be governed by the laws of the State of Utah. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. If any provision of this Agreement or of any of the other Loan Documents are declared invalid for any reason by a court of competent jurisdiction, the invalid provision shall be deemed omitted and the remaining terms of this Agreement and of all of the other Loan Documents shall remain in full force and effect. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

8.14 Construction. This Deed of Trust is the result of substantial negotiations between Trustor and Lender and shall be construed in accordance with the fair intent of the language contained herein in its entirety and not for or against either party, regardless of which party was responsible for its preparation. Trustor and Lender each represent to the other that each has consulted with its own legal counsel in connection with this Agreement.

8.15 Definitions. As used herein: the term "**Trustor**" means the Trustor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "**Trustee**" means the Trustee herein named, together with any successor Trustee; and the term "**Lender**" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants. All references to Article 9 of the Uniform Commercial Code of the State of Utah shall be deemed to refer to Article 9a thereof.

8.16 Successors and Assigns; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4 hereof. Each person executing this Deed of Trust as Trustor shall be jointly and severally liable for all obligations of Trustor hereunder. In exercising any rights hereunder or taking actions provided for herein, Lender may act through its respective employees, agents or independent contractors as authorized by Lender. Upon the occurrence of any default, Lender may proceed against any Trustor, any guarantor, or any of Lender's security for the Loan in such order and manner as Lender may elect in its sole discretion.

8.17 Further Assurances; Clerical Errors. Trustor agrees to execute and acknowledge such additional documents as may be necessary or desirable in order to carry out the intent and purpose of this Deed of Trust and the other Loan Documents, to confirm or establish the lien hereof, or to correct any clerical errors or legal deficiencies. Without limiting the foregoing, Trustor agrees to execute a replacement Note in the event the Note is lost or destroyed and to execute an amended and restated substitute Note to correct any clerical or other errors which may be discovered in the original Note. Failure of Trustor to comply with any request by Lender pursuant to this Section within ten (10) days after written request by Lender shall constitute a material Event of Default hereunder.

8.18 Time. Time is of the essence in connection with all obligations of Trustor herein.

8.19 Estoppel Certificate. Trustor shall, within ten days of a written request from Lender and at no charge to Lender, furnish Lender or any other party designated by Lender with a written statement,

duly acknowledged, setting forth the sums secured hereby and any right of set-off, counterclaim or other defense that may exist with regard to the Secured Obligations.

8.20 Request for Notice. Trustor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

8.21 Assignment of Loan Documents. Lender may assign the Loan Documents in whole or in part. Lender may make available to any proposed assignee or participant all credit and financial data with respect to Trustor and any guarantor as may be in the possession of Lender. Trustor agrees to provide any additional information that any proposed assignee or participant may reasonably request.

8.22 Certain Obligations Unsecured. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Indemnity Agreement or the Guaranty, and (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall, in itself, impair or limit Lender's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

8.23 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same original.

8.24 Jury Trial Waiver. TRUSTOR WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE LOAN OR THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER ACKNOWLEDGES THAT TRUSTOR HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF TRUSTOR'S OWN FREE WILL, AND THAT TRUSTOR HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Dated as of the day and year first written above.

TRUSTOR:

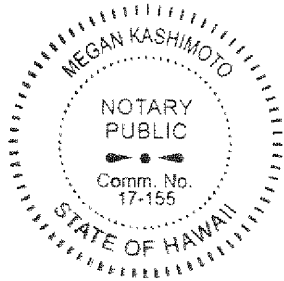
RIVER PARK COMMONS, LLC,
a Utah limited liability company

By: [Signature]
Name: Nathan W. Pugsley
Title: Manager

STATE OF Hawaii)
) ss.
COUNTY OF Honolulu)

I certify that I know or have satisfactory evidence that Nathan W. Pugsley is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of **RIVER PARK COMMONS, LLC**, a Utah limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

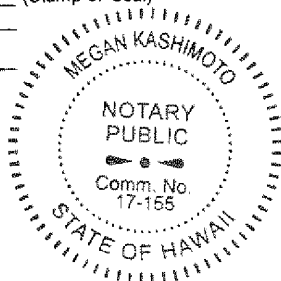
Dated: March 26, 2019



[Signature]
Signature
Megan Kashimoto
Print Name
NOTARY PUBLIC in and for the State of
Hawaii
residing at Honolulu, Hawaii
My commission expires 05/21/2021

Doc Date: 3/26/19 # Pages: 20
Notary Name: Megan Kashimoto Circuit
Doc. Description: Deed of Trust (Stamp or Seal)

[Signature] 3/26/19
Notary Signature Date



**EXHIBIT A
LEGAL DESCRIPTION**

An entire parcel of property, situate in the NW1/4 of Section 12, Township 2 South, Range 1 West, Salt Lake Base & Meridian, more particularly described as follows:

Commencing at the North Quarter Corner of said Section 12; thence S00°05'04"E 145.36 feet being a measured distance to a Witness Corner in 4800 South Street; thence N89°49'23"W 1,390.53 feet to a Street Monument in 4800 South Street, being the Basis of Bearing; thence West 74.62 feet; thence South 789.92 feet to the POINT OF BEGINNING; said point being the intersection of the westerly right of way line of Murray Boulevard and the Northerly boundary of Hunter's Woods Condominium Plat, recorded in the Office of the Salt Lake County Recorder in Book 85-4, Page 70, as determined by survey; thence along the boundary of said Hunter's Woods Condominiums the following five (5) courses and distances: (1) S71°14'30"W 172.00 feet; thence (2) N00°04'30"E 55.72 feet; thence (3) N89°55'30"W 120.00 feet; thence (4) S00°04'30"W 60.68 feet; thence (5) S87°42'30"W 138.45 feet to the Northwest corner of said Hunter's Woods Condominium Plat; said point being the Easterly Boundary of the Citadel Broadcasting Company, per a Trustee's Quitclaim Deed recorded in the Office of the Salt Lake County Recorder as Entry #7620545, Book 8356, Page 0937; thence N00°04'29"E 307.43 feet along said Easterly Boundary line to the Northerly Boundary of said entire property; thence along said Northerly Boundary the following three (3) courses and distances: (1) N56°53'06"E 155.16 feet; thence (2) N34°53'06"E 138.70 feet; thence (3) N89°53'13"E 113.94 feet to the Westerly right of way line of said Murray Boulevard; thence along said Westerly right of way line the following three (3) courses and distances: (1) S02°06'35"E 69.04 feet; thence (2) along the arc of a curve to the left with a radius of 688.00 feet a distance of 197.53 feet through a central angle of 16°27'00" Chord: S10°20'05"E 196.85 feet; thence (3) S18°33'35"E 187.66 feet to the point of beginning.

The following is shown for information purposes only: Tax ID / Parcel No. 21-12-107-009