

AFTER RECORDING

RETURN TO:

Security Service Federal Credit Union
15000 IH 10 West
San Antonio, Texas 78249
Attn: Commercial Services

13112437

10/30/2019 2:51:00 PM \$40.00

Book - 10853 Pg - 4444-4453

RASHELLE HOBBS

Recorder, Salt Lake County, UT

COTTONWOOD TITLE

BY: eCASH, DEPUTY - EF 10 P.

OTA # 116459. WHP

Tax Parcel No. 15-10-304-004 and 15-10-304-005

Space above for Recorder's use

ASSIGNMENT OF RENTS

This ASSIGNMENT OF RENTS ("**Assignment**"), dated effective as of October 30, 2019, is executed and delivered by **SPORTS COMPLEX AT RIVERBEND, LLC**, a Utah limited liability company (the "**Assignor**"), to **SECURITY SERVICE FEDERAL CREDIT UNION** (the "**Assignee**").

RECITALS:

Assignor owns the land (the "**Land**") described on Exhibit A, hereto attached and hereby made a part hereof.

Assignor has executed and delivered to Assignee a promissory note of even date herewith, in the principal sum of **Five Million Two Hundred Thousand and No/100 Dollars (\$5,200,000.00)** payable to the order of Assignee (as the same may be modified, extended, renewed, rearranged, replaced or increased from time to time, herein called the "**Note**"), being secured by, among other security, a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement on the Land, securing the Note (as the same may be amended, supplemented, restated or replaced from time to time, herein called the "**Deed of Trust**"), executed the same date as the Note, from Assignor to First American Title Insurance Company, as trustee for the benefit of Assignee, of even date herewith, pursuant to the terms of that certain Loan Agreement of even date herewith by and between Assignor and Assignee. The Land and all improvements now or hereafter constructed thereon or related thereto and all other property now or hereafter covered by the Deed of Trust is herein collectively called the "**Property**". All capitalized terms not otherwise defined in this Assignment shall have the respective meanings ascribed to them in the Deed of Trust. The terms of this Assignment shall be cumulative with those of the Deed of Trust.

ASSIGNMENTS AND COVENANTS:

For and in consideration of the foregoing and the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign and covenant as follows:

1. **ASSIGNMENT OF RENTS, REVENUES, INCOME AND PROFITS.** Assignor hereby assigns, grants a continuing security interest in, and conveys to Assignee all of

Assignor's interest in all rents, revenues, income and profits ("**Rental**") payable under each Lease now or at any time hereinafter existing, such assignment being upon the terms set forth below. The term "**Lease**" or "**Leases**" means any oral or written agreement between Assignor and another person or entity to use or occupy all or any portion of the Property, together with any guaranties or security for the obligations of any tenant, lessee, sublessee or other person or entity having the right to occupy, use or manage any part of the Property in favor of Assignor under any Lease. Each time Assignor enters into a Lease, such Lease shall automatically become subject to this Assignment without further action. The assignment of Rental in this Assignment is intended to be an absolute assignment from Assignor to Assignee and not merely the passing of a security interest. Assignee's rights to the Rental are not contingent upon and may be exercised without possession of the Mortgaged Property (as defined in the Deed of Trust). Each time Assignor enters into a Lease, such Lease shall automatically become subject to this Assignment without further action.

2. **ASSIGNEE'S RIGHT TO COLLECT AND RECEIVE RENTAL UPON AN EVENT OF DEFAULT.** The transfer of Rental to Assignee shall be upon the following terms: (a) Assignee may send notices to any and all tenants of the Property advising them of this Assignment; (b) upon an Event of Default, as defined in the Loan Agreement between Assignor and Assignee, the Assignee may direct all Rentals be paid directly to Assignee or Assignee's agent; (c) upon receipt from Assignee of notice of an Event of Default, each tenant is hereby authorized and directed to pay directly to Assignee all Rental thereafter accruing or payable and receipt of Rental by Assignee shall be a release of such tenant to the extent of all amounts so paid; (d) Rental so received by Assignee shall be applied by Assignee, first to the reasonable expenses, if any, of collection and then to the Indebtedness as Assignee may elect; (e) without impairing its rights hereunder, Assignee may, at its option, at any time and from time to time, release to Assignor Rental so received by Assignee, or any part thereof, (f) Assignee shall not be liable for its failure to collect or its failure to exercise diligence in the collection of Rental, but shall be accountable only for Rental that it shall actually receive, except in the event of Assignee's gross negligence or willful misconduct; and (g) the assignment of the Rental shall terminate upon the release of the Deed of Trust, but no tenant shall be required to take notice of termination until a copy of such release shall have been delivered to such tenant. It shall never be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Assignment. It is agreed that any Rental retained and reserved by Assignor pursuant to the aforementioned license will not constitute a payment by Assignor to Assignee of any portion of the Indebtedness (and hence will not be credited to the Indebtedness) until the Rental is actually paid to Assignee and retained by Assignee.

3. **REMEDIES.** Should an Event of Default occur (subject to any applicable notice and cure periods), Assignor agrees to deliver to Assignee possession and control of all Rental accruing after the Event of Default and held by Assignor. Assignor specifically agrees that Assignee may upon the occurrence of any Event of Default (subject to any applicable notice and cure periods) or at any time thereafter, personally or through an agent selected by Assignee, take or have the Trustee take possession and control of all or any part of the Property and may receive and collect all Rental theretofore accrued and all thereafter accruing therefrom until the final termination of the Deed of Trust or until the foreclosure of the lien of the Deed of Trust, applying so much thereof as may be collected before sale of the Property by the Trustee or judicial foreclosure of the Deed of Trust first to the reasonable expenses of Assignee incurred in obtaining the Rental and then applying the Rental so received to the Indebtedness as Assignee may elect.

Any such action by Assignee shall not operate as a waiver of the Event of Default in question, or as an affirmation of any Lease or of the rights of any tenant in the event title to that part of the Property covered by the Lease or held by the tenant should be acquired by Assignee or other purchaser at foreclosure sale. After the occurrence of an Event of Default, subject to applicable notice and cure periods, Assignee, Assignee's agent or the Trustee may use against Assignor or any other person such lawful or peaceable means as the person acting may see fit to enforce the collection of any such Rental or to secure possession of the Property, or any part of it and may settle or compromise on any reasonable terms as Assignee, Assignee's agent or the Trustee reasonably sees fit, the liability of any person or persons for any such Rental. In particular, Assignee, Assignee's agent or the Trustee may institute and prosecute to final conclusion actions of forcible entry and detainer, or actions of trespass to try title, or actions for damages, or any other appropriate actions, in the name of Assignee or the Trustee, and may settle, compromise or abandon any such actions as Assignee, Assignee's agent or the Trustee may reasonably see fit; and Assignor binds itself and its successors and assigns to take whatever reasonable lawful or peaceable steps Assignee, Assignee's agent or the Trustee may ask of it, including the institution and prosecution of actions of the character above stated. However, neither Assignee, Assignee's agent nor the Trustee shall be obligated to collect any such Rental or be liable or chargeable for failure to do so unless due to such party's gross negligence or willful misconduct. Upon any sale of the Property or any part thereof in foreclosure of the lien or security interest created by the Deed of Trust, such Rental so sold which thereafter accrues shall be deemed included in such sale and shall pass to the purchaser free and clear of the assignment made in this Assignment. Nothing in this Assignment is intended to require Assignee to institute any legal proceedings or engage in any self help remedies in order to make the assignment of the Rental to Assignee operative.

4. NO MORTGAGEE IN POSSESSION; NO LIABILITY OF ASSIGNEE. Assignee's acceptance of this Assignment shall not, before entry upon and taking possession of the Property by Assignee, be deemed to constitute Assignee a "mortgagee in possession," nor obligate Assignee to appear in or defend any proceeding relating to any of the Leases or to the Property; take any action hereunder, expend any money, incur any expenses or perform any obligation or liability under the Leases, or assume any obligation under the Leases including the obligation to return any deposit delivered to Assignor by any tenant. Assignee shall not be liable for any injury or damage to person or property in or about the Property unless due to such party's gross negligence or willful misconduct. The collection of Rental due under the Leases by Assignee shall not render Assignee liable with respect to any obligations of Assignor under any of the Leases unless Assignee has foreclosed on the lien of the Deed of Trust (or accepted a deed in lieu thereof) and is in possession of the Property.

5. ADDITIONAL COVENANTS, WARRANTIES AND REPRESENTATIONS CONCERNING LEASES AND RENTAL. Assignor covenants, warrants and represents that:

- a. Assignor has not entered into any prior oral or written assignment, pledge or reservation of the Rental or entered into any prior assignment or pledge of Assignor's landlord interests in any Lease or performed any act or executed any other instruments which might prevent or limit Assignee from operating under the terms and conditions of this Assignment, other than the execution of the Leases;

- b. Assignor has good title to the Leases and Rental hereby assigned and the authority to assign same, and no other person or entity has any right, title or interest in and to the landlord's interests therein;
- c. Assignor agrees that no Rental will be waived, released, discounted, or compromised by Assignor, except in the ordinary course of business of Assignor or with the prior written consent of Assignee, which consent will not be unreasonably withheld;
- d. Assignor shall (i) perform all of the terms and conditions of the Leases, (ii) upon Assignee's reasonable request, execute an additional assignment to Assignee of all Leases then affecting the Property and all Rental and other sums due thereunder by assignment(s) in form and substance reasonably required by Assignee and reasonably satisfactory to Assignor, and (iii) at the request of Assignee, and if permissible under the terms of any such Lease, record a memorandum of such Leases and the assignment(s) thereof to Assignee. Assignor will not, without the prior written consent of Assignee, which consent will not be unreasonably withheld, amend or modify in any material respect, extend, renew, terminate, cancel or surrender any Lease or suffer or permit any of the foregoing, orally or in writing;
- e. Except for Leases previously approved by Assignee, Assignor shall not execute any Lease unless the tenant under such Lease and the terms of such Lease have been approved or deemed approved by Assignee, which approval will not be unreasonably withheld;
- f. Assignor shall give immediate notice to Assignee of any notice Assignor received from any tenant under any Leases specifying any material claimed default by any party under such Leases;
- g. Assignor shall enforce the tenants' obligations under the Leases;
- h. Assignor shall defend, at Assignor's reasonable expense, any proceeding pertaining to the Leases, including, if Assignee so requests, any such proceeding to which Assignee is a party, provided that such proceeding has not resulted from Assignee's gross negligence or willful misconduct, and provided that Assignor's and Assignee's interests are not adverse in any such proceeding;
- i. Assignor shall neither create nor permit any encumbrance upon its interest as landlord under the Leases, except for the Deed of Trust and any other encumbrances permitted by the Deed of Trust;
- j. Assignor shall not encumber or assign, or permit the encumbrance or assignment of, any of its interest in the Leases or Rental without the prior written consent of Assignee, which consent will not be unreasonably withheld;
- k. Assignor shall not waive or release any material obligation of any tenant under the Leases;

1. Assignor shall from time to time furnish to Assignee, within a reasonable time after written demand therefor by Assignee, true, correct and complete copies of all Leases or any portion of the Leases specified by Assignee; and
 - m. Assignor shall not in any event collect any Rental more than one (1) month in advance of the time it will be earned (and if Assignor does so, in addition to any other rights or remedies available by reason of such Event of Default, all Rental so collected more than one (1) month in advance of the time it is earned shall be delivered to Assignee to be applied to the Indebtedness).
6. **MERGER.** There shall be no merger of the leasehold estates created by the Leases with the fee or any other estate in the Property without the prior written consent of Assignee.
7. **REASSIGNMENT.** By Assignee's acceptance of this Assignment, it is understood and agreed that a full and complete release of the Deed of Trust shall operate as a full and complete reassignment to Assignor of Assignee's rights and interests under this Assignment, subject to the provisions of Section 8 below.
8. **PAYMENTS RETURNED.** Assignor agrees that, if at any time all or any part of any payment previously applied by Assignee to the Indebtedness is or must be returned by Assignee, or recovered from Assignee, for any reason (including the order of any bankruptcy court), this Assignment shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Assignor hereby agrees to indemnify Assignee against, and to save and hold Assignee harmless from any required return by Assignee, or recovery from Assignee, of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws.
9. **VENUE.** This Assignment is performable in Bexar County, Texas, which shall be a proper place of venue for suit on or in respect of this Assignment. Assignor irrevocably agrees that any legal proceeding in respect of this Assignment shall be brought in the district courts located in Bexar County, Texas or the United States District Court for the Western District of Texas, San Antonio Division (collectively, the "**Specified Courts**"). Assignor hereby irrevocably submits to the nonexclusive jurisdiction of the state and federal courts of the State of Texas. Assignor hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Assignment brought in any Specified Court, and hereby further irrevocably waives any claims that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Assignor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided bylaw. **This Assignment shall be governed by and construed in accordance with the applicable laws of the State of Utah except to the extent (a) of procedural and substantive matters relating only to the creation, perfection and foreclosure of liens and enforcement of rights and remedies against the rentals, which matters shall be governed by the laws of the State wherein the Property is located to the full extent required by the laws of such State, and (b) that the laws of the United States of America and any rules, regulations, or orders issued or promulgated thereunder, applicable to the affairs and transactions entered into by Assignee, otherwise pre-empt Utah law, in which event such federal law shall control.**

10. **MERGER, CONSOLIDATION OR SALE OF ASSETS.** In the event of the disposition of all or substantially all of Assignor's assets to one or more persons or entities, the surviving entity or transferee of assets as the case may be shall deliver to Assignee an acknowledged instrument in recordable form specifically assuming all obligations, covenants and responsibilities of Assignor under this Agreement.

11. **NOTICE.** Any notice, request or other communication required or permitted to be given hereunder shall be given as provided in the Loan Agreement. Actual notice, however and from whomever given or received, shall always be effective when received.

12. **SEVERABILITY.** If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Assignment shall not be affected thereby, and this Assignment shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Assignment is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Assignee for having bargained for and obtained it.

13. **GENDER; CERTAIN TERMINOLOGY; SECTION HEADINGS.** The masculine and neuter genders used in this Assignment each includes the masculine, feminine and neuter genders, and the singular number includes the plural where appropriate, and *vice versa*. Wherever the term "including" or a similar term is used in this Assignment, it shall be read as if it were written "including by way of example only and without in any way limiting the generality of the clause or concept referred to." The headings used in this Assignment are included for reference only and shall not be considered in interpreting, applying or enforcing this Assignment.

14. **AMENDMENTS IN WRITING.** This Assignment shall not be changed orally but shall be changed only by agreement in writing signed by Assignor and Assignee. Any waiver or consent with respect to this Assignment shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Assignment.

15. **RIGHTS CUMULATIVE; DELAY NOT WAIVER.** Assignee's exercise of any right, benefit or privilege under any of the Loan Documents or any other papers or at law or in equity shall not preclude the concurrent or subsequent exercise of any of Assignee's other present or future rights, benefits or privileges. The remedies provided in this Assignment are cumulative and not exclusive of any remedies provided by law, the Loan Documents or any other papers. No failure by Assignee to exercise, and no delay in exercising, any right under any loan document relating to the Note or any other papers shall operate as a waiver thereof.

16. **ENTIRE AGREEMENT.** This Assignment embodies the entire agreement and understanding between Assignor and Assignee with respect to its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Assignor acknowledges and agrees that there is no oral agreement between Assignor and Assignee which has not been incorporated in this Assignment.

17. **DEBT MAY BE CHANGED WITHOUT AFFECTING THIS ASSIGNMENT.** Any of the Indebtedness may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Assignment or any other security for any part of the Indebtedness may be waived or released without in anyway altering or diminishing the force or effect of this Assignment, and the assignments contained in this Assignment shall continue until the final termination of this Assignment.

18. **USURY NOT INTENDED; SAVINGS PROVISIONS.** The parties hereto intend to conform strictly to the applicable usury laws. In no event, whether by reason of acceleration of the maturity hereof or otherwise, shall the amount paid or agreed to be paid to Assignee hereunder or otherwise exceed the maximum amount permissible under applicable law. If fulfillment of any provision hereof or of any mortgage, loan agreement or other document now or hereafter evidencing, securing or pertaining to the Note, at the time performance of such provision shall be due, would involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced automatically to the limit of such validity. If Assignee shall ever receive anything of value deemed interest under applicable law which would exceed interest at the highest lawful rate, an amount equal to any amount which would have been excessive interest shall be applied to the reduction of the principal amount owing hereunder in the inverse order of its maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to Assignor. All sums paid or agreed to be paid to Assignee for the use, forbearance or detention of the indebtedness of Assignor to Assignee shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The provisions of this paragraph shall control all existing and future agreements between Assignor and Assignee.

19. **ASSIGNEE AND ASSIGNOR.** The term “**Assignee**” as used in this Assignment shall mean and include the holder or holders of the Indebtedness from time to time, and upon acquisition of the Indebtedness by any holder or holders other than the named Assignee, effective as of the time of such acquisition, the term “**Assignee**” shall mean all of the then holders of the Indebtedness, to the exclusion of all prior holders not then retaining or reserving an interest in the Indebtedness from time to time, whether such holder acquires the Indebtedness through succession to or assignment from a prior Assignee. The term “**Assignor, his successors and assigns**” shall also include the heirs and legal representatives of each Assignor who is a natural person and the receivers, conservators, custodians and trustees of each Assignor, provided that no Assignor may assign or delegate any of its or his rights, interests or obligations under this Assignment, the Note or any loan document relating to the Note without Assignee’s express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Assignee’s election.

20. **THIS ASSIGNMENT CONTROLS.** In the event of any express inconsistency between the provisions of this Assignment and the Deed of Trust regarding any Rental or any Lease, this Assignment, to the extent valid, enforceable and in effect, shall govern and control.

UTAH STATUTE OF FRAUDS: NOTICE TO ASSIGNOR: PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, ASSIGNOR AND ANY GUARANTOR ARE HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY

EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signatures on following page]

EXECUTED to be effective as of the first date written above.

ADDRESS OF ASSIGNOR:

1985 Covey View Court
Salt Lake City, Utah 84106

ASSIGNOR:

SPORTS COMPLEX AT RIVERBEND, LLC

By: *L. Murray Yates*
Name: L. Murray Yates
Title: Member

STATE OF UTAH §
 §
COUNTY OF Salt Lake §

This instrument was acknowledged before me this 29 day of October, 2019, by L. Murray Yates, the Member of Sports Complex at Riverbend, LLC, a Utah limited liability company, for and on behalf of the company.

Wende Harris
Notary Public

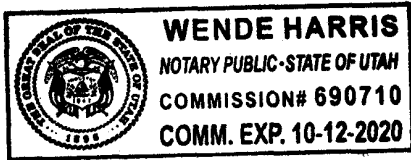


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

Beginning at the Northeast corner of Lot 10 of Riverbend Industrial Park, filed for record June 13, 2006 as Entry No. 9751288 in Book 2006P of Plats at Page 164, in the office of the Salt Lake County Recorder; and running thence South 00°03'59" West 357.00 feet; thence North 90°00'00" West 365.69 feet to a point on a 25.00 foot radius non-tangent curve to the right; thence 3.94 feet along the arc of said curve through a central angle of 09°02'16" (radius bears North 80°54'57" East 25.00 feet, chord bears North 04°33'55" West 3.94 feet); thence North 00°02'47" West 325.78 feet to a point on a 27.00 foot radius curve to the right; thence 42.41 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 44°57'14" East 38.18 feet) to a point on the South right-of-way line of 1040 South Street; thence along said right-of-way line North 89°57'14" East 339.70 feet to the point of beginning.

Being all of Lots 10 and 11 and a portion of Lot 12, RIVERBEND INDUSTRIAL PARK, according to the official plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah.

PARCEL 2:

Lot 12, RIVERBEND INDUSTRIAL PARK, according to the official plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah.

LESS AND EXCEPT the following: Beginning at the Southeast corner of Lot 11, Riverbend Industrial Park; thence South 00°03'59" West 57 feet, more or less; thence North 90°00'00" West 365.69 feet, more or less; thence Northwesterly along a 25 foot radius curve to the right 3.94 feet (chord bears North 04°33'55" West 3.94 feet); thence North 00°02'47" West 52.78 feet, more or less; thence North 89°57'14" East 366.11 feet to beginning.

Parcel Identification Numbers: 15-10-304-004 and 15-10-304-005