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

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF *UTAH CODE ANNOTATED* §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). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

This **CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Security Instrument**"), is made as of August 12, 2022, by **ROERS SALT LAKE CITY APARTMENTS BORROWER LLC**, a Delaware limited liability company having an address at 110 Cheshire Lane, Suite 120, Minnetonka, MN 55305 ("**Trustor**"), to **OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**, having an address at 3900 Traverse Mountain Blvd., Suite 201, Lehi, Utah 84043 as Trustee ("**Trustee**"), for the benefit of **SIMMONS BANK**, an Arkansas state bank, having an address at 5950 Berkshire Lane, Suite 400, Dallas, Texas 75225 (together with its successors and assigns, hereinafter referred to as "**Beneficiary**").

Trustor and Beneficiary have entered into a Construction Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "**Loan Agreement**") pursuant to which Beneficiary is making a secured loan to Trustor in the maximum principal amount of up to \$46,350,000.00 (the "**Loan**"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a Note dated the date hereof made by Trustor to Beneficiary in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Note**").

This Security Instrument is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Utah (U.C.A. §§ 70A-1-1 et seq., as amended from time to time) (the "**Uniform Commercial Code**") and in compliance therewith the following information is set forth:

Trustor: ROERS SALT LAKE CITY APARTMENTS
BORROWER LLC
110 Cheshire Lane, Suite 120
Minnetonka, MN 55305

Beneficiary: SIMMONS BANK
5950 Berkshire Lane, Suite 400
Dallas, TX 75225

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Security Instrument, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "**Loan Documents**"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Trustor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "**Bankruptcy Code**"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "**Debt**"), Trustor has given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, transferred and hypothecated and by these presents does hereby give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge,

transfer, assign and hypothecate unto Trustee, in trust for the benefit of Beneficiary, **WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION**, the land described in Exhibit A (the “**Premises**”), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the “**Improvements**”);

TOGETHER WITH: all right, title, interest and estate of Trustor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the “**Property**”):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, excess or unused zoning floor area development rights, abatements, zoning floor area bonuses, zoning incentives or awards, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, appurtenant to, relating or pertaining to the Premises and the Improvements or otherwise owned by or available to Trustor; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the “**Equipment**”), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment that may be subject to any “security interest” as defined in the Uniform Commercial Code, as in effect in the State of Utah (the “**UCC**”), superior in lien to the lien of this Security Instrument;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases, subleases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the “**Leases**”) and all rents (including

“Rents” as defined in the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101 et seq. (the “*Rents Act*”), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, economic stimulus, incentive or other similar payments received directly or indirectly from any Governmental Authority or quasi-Governmental Authority, whether in the form of aide, money, relief or another compensation scheme (including any of the foregoing initiated in connection with the COVID-19 virus or any other pandemic or epidemic), deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Trustor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Trustor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the “*Rents*”), together with all proceeds from the sale or other disposition, as defined in the Utah Uniform Commercial Code, Utah Code Ann. § 70A-1-101 et seq. or the Rents Act., of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(f) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications (including the Plans and Specifications), designs, drawings, surveys, title insurance policies, permits, certificates of use and occupancy (or their equivalent), consents, licenses, management agreements (including any construction management agreement), leasing agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Property, or the construction, use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the “*Intangibles*”);

(h) any interest rate protection arrangement to which Trustor is a party and all agreements, instruments, documents and contracts now or hereafter entered into by Trustor with respect to any such interest rate protection arrangement;

(i) all reciprocal easement or operating agreements, declarations, development agreements, developer's or utility agreements, and any similar such agreements or declarations now or hereafter affecting the Property or any part thereof; and

(j) all proceeds, products, offspring, rents (including "Rents" as defined in the Rents Act) and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Trustor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Security Instrument shall automatically extend to all Rents acquired by the Trustor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall well and truly pay to Beneficiary the Debt at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Trustor represents and warrants to and covenants and agrees with Beneficiary as follows:

PART I - GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Trustor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Trustor (i) agrees to insure, repair, maintain and restore damage to the Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

2. Leases and Rents.

(a) Trustor does hereby presently and unconditionally collaterally assign to Beneficiary and grants to Beneficiary a security interest in and to all of Trustor's right, title and interest in all current and future Leases and Rents, it being intended by Trustor that this assignment constitutes a present and irrevocable collateral assignment. Such assignment shall not be construed to bind Beneficiary to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary. Nevertheless, subject to the terms of this Section, Beneficiary grants to Trustor a revocable right to operate and manage the Property and to collect the Rents subject to the requirements of the Loan Agreement and Rents Act (the

“Collection Right”) (including the deposit of Rents into the Clearing Account). Upon an Event of Default, without the need for notice or demand, the Collection Right granted to Trustor herein shall automatically be revoked, and Beneficiary shall immediately be entitled to possession of all Rents in the Clearing Account, the Cash Management Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Beneficiary enters upon or takes control of the Property. Trustor hereby grants and assigns to Beneficiary the right, at its option, upon revocation of the Collection Right granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such Collection Right, may be applied toward payment of the Debt in such priority and proportions as are set forth in the Loan Agreement, or if not stated in the Loan Agreement, then as Beneficiary in its sole discretion shall deem proper.

(b) Trustor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

(c) This Section 2 is subject to the Rents Act, and in the event of any conflict or inconsistency between the provisions of this Security Instrument and the provisions of the Rents Act, the provisions of the Rents Act shall control and Agent shall have all rights and remedies available under the Rents Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

3. Use of Property. Trustor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property. If under applicable zoning provisions the use of the Property is or shall become a nonconforming use, Trustor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Beneficiary. Trustor shall not (i) change the use of the Property, (ii) permit or suffer to occur any waste on or to the Property or (iii) take any steps to convert the Property to a condominium or cooperative form of ownership.

4. Transfer or Encumbrance of the Property.

(a) Trustor acknowledges that (i) Beneficiary has examined and relied on the creditworthiness and experience of the principals of Trustor in owning and operating properties such as the Property in agreeing to make the Loan, (ii) Beneficiary will continue to rely on Trustor’s ownership of the Property as a means of maintaining the value of the Property as security for the Debt, and (iii) Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should Trustor default in the repayment of the Debt, Beneficiary can recover the Debt by a sale of the Property. Trustor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(b) Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Transfer in violation of this Section 4. This provision shall apply to any Transfer that is not a Permitted Transfer regardless of whether voluntary or not. Any Transfer made in contravention of this Section 4 shall be null and void and of no force and effect. Trustor agrees to

bear and shall pay or reimburse Beneficiary on demand for all out-of-pocket expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Beneficiary in connection with the review, approval and documentation of any Permitted Transfer.

5. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Property, Trustor will pay such tax, with interest and penalties thereon, if any. If Beneficiary is advised by its counsel that the payment of such tax or interest and penalties by Trustor would be unlawful, taxable to Beneficiary or unenforceable, or would provide the basis for a defense of usury, then Beneficiary shall have the option, by notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

6. No Credits on Account of the Debt. Trustor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, and no deduction shall otherwise be made or claimed from the assessed value of the Property for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

7. Further Acts, Etc. Trustor shall, to the extent permitted by Utah law, at its sole cost, duly execute, perform, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Beneficiary shall reasonably, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby transferred, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument, or for filing, registering or recording this Security Instrument or for facilitating the sale and transfer of the Loan (or any portion thereof) and the Loan Documents in connection with a Secondary Market Transaction as described in Section 10.1 of the Loan Agreement, provided that no such action will increase the obligations or decrease the rights of Borrower other than to a de minimis extent, and subject to applicable limitations of the Loan Agreement. Upon foreclosure, the appointment of a receiver or any other relevant action, Trustor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Property. Trustor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including such rights and remedies available to Beneficiary pursuant to this Section. Notwithstanding anything to the contrary in the immediately preceding sentence, Beneficiary shall not execute any document as attorney-in-fact of Trustor unless (x) Trustor shall have failed or refused to execute the same within five (5) Business Days after Beneficiary's request therefor, or (y) in Beneficiary's good faith determination it would be materially prejudiced by the delay involved in making such a request. Beneficiary shall give prompt notice to Trustor of any exercise of the power of attorney as provided for in this Section 7, along with copies of all documents executed in connection therewith.

8. Recording of Security Instrument, Etc. Trustor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, shall cause this Security Instrument, and any security instrument creating a valid lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Trustor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Security Instrument, any deed of trust supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law so to do. Trustor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Security Instrument.

9. Right to Cure Defaults. Upon the occurrence of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Debt, shall be secured by this Security Instrument and the other Loan Documents and shall be due and payable to Beneficiary upon demand.

10. Remedies.

(a) Upon the occurrence of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Property, by Beneficiary itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Security Instrument, in which case the Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of

this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Property and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

(vi) subject to the limitations of applicable Utah law, recover judgment on the Note either before, during or after any proceeding for the enforcement of this Security Instrument;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, in accordance with the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Ann, §78B-21-101 *et. seq.* without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Trustor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Beneficiary's interest in the Leases and Rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and employees therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, and its counsel, agents and employees;

(ix) subject to the limitations of applicable Utah law, require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Property occupied by Trustor, and require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver, and, in default thereof, evict Trustor by summary proceedings or otherwise;

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Trustor relating to the Property; or

(xi) give such notice of default and of election to cause the Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein; Trustee shall then record and give such notice of Trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Trustor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall to the maximum extent permitted by applicable law, continue as a lien on the remaining portion of the Property.

(b) The proceeds of any sale made under or by virtue of this Section 10, together with any other sums which then may be held by Beneficiary under this Security Instrument, whether under the provisions of this Section or otherwise, shall be applied by Beneficiary to the payment of the Debt in such priority and proportion as follows: First: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and reasonable attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed; Second: To payment of the obligations secured by this Security Instrument; and, Third: The balance, if any, to the person or persons legally entitled to the proceeds, or Trustee, in Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29.

(c) Beneficiary may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Beneficiary, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Beneficiary is hereby irrevocably appointed the true and lawful attorney of Trustor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property

and rights so sold and for that purpose Beneficiary may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Section 10, 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, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Trustor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Trustor.

(e) Upon any sale made under or by virtue of this Section 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale and in accordance with Utah Code Ann. § 57-1-28(1)(b) and other applicable Utah law, Beneficiary may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under applicable law and in accordance with this Security Instrument or any other Loan Document.

(f) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Property or upon any other property of Trustor shall affect in any manner or to any extent the lien of this Security Instrument upon the Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

(g) Beneficiary may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 10 at any time before the conclusion thereof, as determined in Beneficiary's sole discretion and without prejudice to Beneficiary.

(h) Beneficiary may resort to any remedies and the security given by this Security Instrument or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Beneficiary's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Beneficiary to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Beneficiary of any payment after the occurrence of any Event of Default and no payment by Beneficiary of any obligation for which Trustor is liable hereunder shall be deemed to waive or cure any Event of Default, or Trustor's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Beneficiary to Trustor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Property or the liability of Trustor to pay the Debt. No waiver by Beneficiary shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Beneficiary in exercising its rights and remedies under this Section 10 (including reasonable attorneys' fees and disbursements to the

extent permitted by law), shall be paid by Trustor immediately upon notice from Beneficiary, with interest at the Default Rate for the period after notice from Beneficiary, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Security Instrument.

(i) The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including (A) any renewal, extension or modification which Beneficiary may grant with respect to any of the Debt, (B) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect to the Property or any portion thereof or (C) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. Right of Entry. In addition to any other rights or remedies granted under this Security Instrument, Beneficiary and its agents shall have the right to enter and inspect the Property at any reasonable time during the term of this Security Instrument. The cost of such inspections or audits shall be borne by Trustor should Beneficiary determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Beneficiary. The cost of such inspections, if not paid for by Trustor following demand, may be added to the principal balance of the sums due under the Note and this Security Instrument and shall bear interest thereafter until paid at the Default Rate.

12. Security Agreement. This Security Instrument is both a real property deed of trust and a “security agreement” from Trustor, as debtor, to Beneficiary, as secured party, within the meaning of the UCC. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. Trustor by executing and delivering this Security Instrument has granted and hereby grants to Beneficiary, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the UCC (such portion of the Property so subject to the UCC being called in this Section the “*Collateral*”). The foregoing sentence is intended to grant in favor of Beneficiary a first priority continuing lien and security interest in all of Trustor’s assets. Trustor authorizes Beneficiary and its counsel to file UCC financing statements in form and substance satisfactory to Beneficiary, describing the collateral as “all assets of Trustor, whether now owned or existing or hereafter acquired or arising and wheresoever located, and all proceeds and products thereof, including all fixtures on the Premises” or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Security Instrument. This Security Instrument shall also constitute a “fixture filing” for the purposes of the UCC. As such, this Security Instrument covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first Section of this Security Instrument. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary, Trustor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Trustor shall pay to Beneficiary on demand any and all out-of-pocket expenses, including reasonable attorneys’ fees and disbursements, incurred or paid by Beneficiary in protecting the

interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral, sent to Trustor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Trustor, Trustor shall notify Beneficiary thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Beneficiary's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Beneficiary shall require the filing or recording of additional UCC forms or continuation statements, Trustor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Beneficiary shall reasonably deem necessary, and shall pay all out-of-pocket expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Trustor's obligations under the Loan Documents.

13. Actions and Proceedings. Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Beneficiary, in its sole discretion, decides should be brought to protect its or their interest in the Property. Beneficiary shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. Marshalling and Other Matters. Trustor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Trustor hereby expressly waives, to the extent permitted by law, any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Trustor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law. The lien of this Security Instrument shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Beneficiary of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, change, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Beneficiary may foreclose, or exercise any other remedy available to Beneficiary under other Loan Documents without first exercising or enforcing any of its remedies under this Security Instrument, and any exercise of the rights and remedies of Beneficiary hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Beneficiary's rights and remedies thereunder.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

16. **Inapplicable Provisions.** If any term, covenant or condition of this Security Instrument is held to be invalid, illegal or unenforceable in any respect, this Security Instrument shall be construed without such provision.

17. **Headings.** The headings in this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. **Duplicate Originals.** This Security Instrument may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form; and the word "***Trustor***" shall mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "***Beneficiary***" shall mean "Beneficiary and any subsequent holder of the Note," the words "***Property***" shall include any portion of the Property and any interest therein, the word "***including***" means "including but not limited to" and the words "***attorneys' fees***" shall include any and all attorneys' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Property and Collateral and enforcing its rights hereunder.

20. **Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part thereof.

21. **Assignments.** Beneficiary shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Beneficiary under this Security Instrument.

22. **Waiver of Jury Trial.** TRUSTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.

23. **Consents.** Any consent or approval by Beneficiary in any single instance shall not be deemed or construed to be Beneficiary's consent or approval in any like matter arising at a subsequent date, and the failure of Beneficiary to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary pursuant hereto shall be narrowly construed to be applicable only to Trustor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Beneficiary a venturer or partner with Trustor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Trustor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

24. **Loan Repayment.** Provided no Event of Default exists, the Lien of this Security Instrument shall be terminated, released and reconveyed of record by Trustee in accordance with applicable law (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

25. **Intentionally Left Blank.**

26. **Governing Law.** WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS SECURITY INSTRUMENT, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

27. **Exculpation.** The liability of Trustor hereunder is limited pursuant to Section 11.1 of the Loan Agreement.

28. **Trustee; Successor Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct.

Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Trustor will, from time to time, reimburse Trustee for and save and hold him harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by him in the performance of his duties. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall, subject to the requirements of applicable Utah law, without any formality or notice to Trustor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Security Instrument, and the description of the real property herein described, which instrument, executed, acknowledged and recorded by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its or his place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

29. **Variable Interest Rate.** The Loan secured by this Security Instrument is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

PART II

STATE-SPECIFIC PROVISIONS

30. **Conflicts With Part I.** In the event of any conflict between the provisions of this Part II and any provision of Part I, then the provisions of this Part II shall control.

(a) **Default Interest, Late Charges, Etc.** For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the

Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Security Instrument lien upon the Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which lender may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument.

(b) **Property Status.** Trustor represents and warrants to Beneficiary that (a) the Property is not used principally for agricultural purposes, and (b) the loan secured by this Security Instrument was not made primarily for personal, family or household purposes. Trustor acknowledges that the stated purpose for which this Security Instrument is given is to construct residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees that promptly upon completion of the contemplated improvements, and upon Beneficiary's request, it will provide to a Beneficiary a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees to provide a written rent roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number upon Beneficiary's request from time to time.

(c) **Foreclosure; Lawsuits.** Upon an Event of Default, and during the continuance thereof, Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose (or cause the Trustee to foreclose) the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid may be credited against the Secured Obligations in accordance with *Utah Code Annotated* § 57-1-28(1)(b) or other applicable law. Beneficiary, 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. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default, Trustee (at Beneficiary's request) or Beneficiary may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

(i) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or the Utah Uniform Commercial Real Estate Receivership Act, or elsewhere herein, or specifically enforce any of the covenants hereof.

(ii) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Security Instrument as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or specifically enforce any of the covenants hereof. Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale (subject to Beneficiary's (or its nominee's) right to make a credit bid as set forth herein or pursuant to applicable law. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided, however*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(d) **Personal Property.** It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the Project State UCC, Beneficiary, upon an Event of Default, may proceed under the Project State UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

(e) **Deficiency.** Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. To the extent *Utah Code Annotated* § 57-1-32, as now existing or hereafter amended, or any other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

(i) The Property shall be valued “as is” and “with all faults” and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

(ii) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

(iii) Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

(f) **Reinstatement.** If Trustor, Trustor’s successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Security Instrument, Trustor shall pay all documented, reasonable out-of-pocket costs, fees and expenses incurred by Trustee and Trustee’s agents and counsel for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Security Instrument.

(g) **Notice.** Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Property be mailed to it at the address set forth in preamble hereto.

(h) **Amendments to Utah Code Annotated.** In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Instrument, this Security Instrument shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(i) **Obligations of Environmental Indemnity.** Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Security Instrument shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor or Guarantor with respect to the Premises (including, without limitation, any indemnity provided pursuant to, or on account of, Sections 5.30 (clauses (viii) through (xi) thereof) and/or 11.1(f) of the Loan Agreement or pursuant to the Environmental Indemnity Agreement).

(j) **Receiver.** In addition to any other rights provided for in this Security Instrument, Beneficiary may appoint a receiver as and when provided in the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101 et seq.

31. INTEGRATION. PURUSANT TO UTAH CODE ANNOTATED § 25-5-4, TRUSTOR IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENT BETWEEN THE PARTIES.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Trustor has executed this instrument as of the day and year first above written.

TRUSTOR:

**ROERS SALT LAKE CITY APARTMENTS
BORROWER LLC,**
a Delaware limited liability company

By: Roers Salt Lake City Apartments LLC,
a Delaware limited liability company
Its: Manager

By: Roers Salt Lake City Apartments Manager
LLC,
a Minnesota limited liability company
Its: Manager

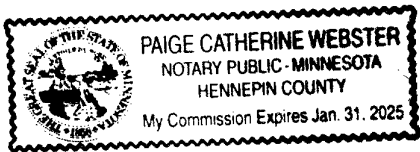
By: Roers Companies Project Holdings LLC,
a Minnesota limited liability company
Its: Manager

By: *Kent Roers*
Name: Kent J. Roers
Title: Manager

ACKNOWLEDGMENT

STATE OF Minnesota)
) : ss.
COUNTY OF Hennepin)

On this 4th day of August, 2022, personally appeared before me Kent J. Roers, as Manager of Roers Companies Project Holdings LLC, a Minnesota limited liability company, Manager of Roers Salt Lake City Apartments Manager LLC, a Minnesota limited liability company, Manager of Roers Salt Lake City Apartments LLC, a Delaware limited liability company, Manager of Roers Salt Lake City Apartments Borrower, LLC, and acknowledged to me that [he/she] executed the within instrument on behalf of said limited liability company.



Paige Webster
Notary Public

[Signature Page to Deed of Trust (Senior Loan) (375 Whitney)]

Exhibit A

Legal Description

Parcel 1:

LOTS 8 through 23, inclusive, Block 1, DESKY'S SECOND ADDITION, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

Together with the Vacated Alley abutting said Lots on the South.

For Informational Purposes Only:

Parcel Identification No. 15-13-130-001, 15-13-130-002, 15-13-130-003, AND 15-13-130-004.

Parcel 2:

LOTS 12 through 27, inclusive, BURR OAK ADDITION, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

For Informational Purposes Only:

Parcel Identification No. 15-13-130-005 AND 15-13-130-006.