



W2962100

E# 2962100 PG 1 OF 15
Leann H. Kilts, WEBER COUNTY RECORDER
18-Jan-19 0246 PM FEE \$39.00 DEP TN
REC FOR: SYNERGY TITLE INSURANCE AGENCY LL
ELECTRONICALLY RECORDED

..... Space Above Line for Recorder's Use

DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT

**PREMISES: 2711 Washington Boulevard (aka 2703 Washington Boulevard) & 375
27th Street, Ogden, UT 84401
(Parcel: 01-004-0063 & 0064)**

<u>THIS DOCUMENT PREPARED BY:</u>	<u>AFTER RECORDING, RETURN TO:</u>
<p style="text-align: center;">Jeffrey Tesch Commercial Lender LLC 75 Gerber Road East, Ste. 102 South Windsor, CT 06074</p>	<p style="text-align: center;">Commercial Lender LLC 75 Gerber Road East, Ste. 102 South Windsor, CT 06074</p>

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DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (the "**Instrument**") is made by **Browning Apartments Ogden, LLC**, as grantor (the "**Grantor**"), a Utah limited liability company with a principal place of business at 2661 Washington Blvd, Ste #203, Ogden, UT 84401 to Synergy Title, as trustee (the "**Trustee**"), with a principal place of business at 466 N. Main Street Ste 204 Clearfield UT 84005, for the benefit of **Commercial Lender LLC**, as beneficiary (the "**Beneficiary**"), a Delaware limited liability with a principal place of business at 75 Gerber Road East, Ste. 102, South Windsor, CT 06074.

RECITAL

Grantor is indebted to **Beneficiary** in the principal amount of **One Million One Hundred Seventy-Four Thousand Five Hundred Dollars and No Cents (\$1,174,500.00)**, as evidenced by **Grantor's Commercial Promissory Note** (as the same may be amended, restated, or modified from time to time, the "**Note**"), payable to **Beneficiary**, executed and delivered contemporaneously with this **Instrument**, and maturing on **Saturday, February 1, 2020** (the "**Maturity Date**"), subject to the terms and conditions of that certain **Commercial Loan Agreement** (as the same may be amended from time to time, the "**Loan Agreement**"), between **Grantor** and **Beneficiary** executed and delivered contemporaneously herewith.

AGREEMENT

TO SECURE TO BENEFICIARY the full and prompt payment and performance of each and all of **Grantor's** obligations under the **Note**, and the performance of the covenants and agreements of **Grantor** contained in this **Instrument**, and in any other documents evidencing, securing, or now or hereafter executed in connection with the **Note** (each, a "**Loan Document**"; collectively, the "**Loan Documents**"; and all of the indebtedness, obligations, and liabilities of **Grantor** arising under the **Note**, the **Loan Documents**, or both, and any and all renewals, modifications, rearrangements, amendments, or extensions thereof, are sometimes hereinafter referred to as the "**Indebtedness**"), **Grantor** hereby **MORTGAGES, WARRANTS, HYPOTHECATES, AND ASSIGNS** to **Beneficiary** the following described property (collectively, the "**Premises**"):

- A The real property located in Weber County, Utah, commonly known as **2711 Washington Boulevard (aka 2703 Washington Boulevard) & 375 27th Street, Ogden, UT 84401**, as such real property is more particularly described in **SCHEDULE 1**, attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim; together with all right, title, and interest of **Grantor** in and to (i) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the **Improvements** (as hereinafter defined), (ii) any strips or gores between the real property and abutting or adjacent properties, and (iii) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real property and other rights, titles, and interests being hereinafter sometimes called the "**Land**");

- B** All buildings, structures, improvements now constructed or at any time in the future constructed or placed upon the **Land**, including any future alterations, replacements and additions (the "**Improvements**");
- C** All fixtures and systems and articles of personal property, of every kind and character, now owned or hereafter acquired by **Grantor** which are now or hereafter is attached to the **Land** or the **Improvements** so as to constitute a fixture under the laws of the state of Utah, and used in or necessary to complete the proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the **Land** or stored elsewhere) for use or installation in or on the **Land** or the **Improvements**, and all renewals and replacements of, substitutions for and additions to the foregoing (all of which are herein sometimes referred to together as "**Accessories**");
- D** All (i) plans and specifications for the **Improvements**; (ii) approvals, entitlements and contracts relating to the **Land** or the **Improvements** or the **Accessories** or any part thereof; (iii) deposits including, but not limited to, **Grantor's** rights in tenants' security deposits (if any), deposits with respect to utility services to the **Land** or the **Improvements** or the **Accessories** or any part thereof, and any deposits or reserves hereunder or under any other **Loan Documents** (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the **Land** or the **Improvements** or the **Accessories** or any part thereof; (iv) permits, licenses, franchises, bonds, certificates and other rights and privileges obtained in connection with the **Land** or the **Improvements** or the **Accessories** or any part thereof; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the **Land**, the **Improvements** and the **Accessories**; and (vi) other properties, rights, titles and interests, if any, specified in any **Section** of this **Instrument** as being part of the **Premises**;
- E** All rents (whether from residential or non-residential space), revenues, and other income of the **Land** or the **Improvements**, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the **Premises**, whether now due, past due or to become due, and deposits forfeited by tenants, and, if **Grantor** is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due (all of which are herein sometimes referred to together as the "**Rents**");
- F** All present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the **Premises**, or any portion of the **Premises** (including proprietary leases or occupancy agreements if **Grantor** is a cooperative housing corporation), and all modifications, extensions or renewals (all of which are herein sometimes referred to together as the "**Leases**");

- G** All proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, **(i)** the properties, rights, titles and interests referred to above in paragraphs **(A)**, **(B)**, **(C)**, **(D)**, **(E)**, and **(F)**; **(ii)** any sale, lease or other disposition thereof; **(iii)** each policy of insurance relating thereto (including premium refunds); **(iv)** the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and **(v)** any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and
- H** All other interests of every kind and character, and proceeds thereof, which **Grantor** now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs **(A)**, **(B)**, **(C)**, **(D)**, **(E)**, **(F)**, **(G)**, and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

Grantor does hereby represent and warrant that **Grantor** is lawfully seized of the **Premises** and has the right, power and authority to **MORTGAGE, PLEDGE, HYPOTHECATE, GRANT, WARRANT, CONVEY AND ASSIGN** the **Premises**, and that the **Premises** are unencumbered except for those encumbrances (the "**Permitted Encumbrances**") shown on the schedule of exceptions to coverage in the **Title Policy** (as defined in the Loan Agreement), issued to and accepted by **Beneficiary** contemporaneously with the execution and recordation of this **Instrument** and insuring **Beneficiary's** interest in the **Premises**. **Grantor** does hereby covenant and agree that **Grantor** will warrant and defend generally the title to the **Premises** against all claims and demands, subject to the **Permitted Encumbrances**.

In consideration of the aforesaid, and in order to more fully protect the security of this **Instrument**, **Grantor** hereby represents, warrants, covenants, and agrees as follows:

- 1. Inspection.** **Beneficiary** and any other **Person** authorized by **Beneficiary** shall have the right to enter and inspect the **Premises** at all reasonable times.
- 2. Security Agreement.** This **Instrument** is also a security agreement between **Grantor**, as debtors, and **Beneficiary**, as secured party, for any of the **Premises** which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code in the state of Utah (the "**UCC**"), for the purpose of securing **Grantor's** obligations under this **Instrument** and to further secure **Grantor's** obligations under the **Note**, and other **Loan Documents**, whether such **Premises** are owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, the "**UCC Collateral**"), and by this **Instrument**, **Grantor** hereby grants to **Beneficiary** a security interest in the **Collateral**. To the extent necessary under applicable law, **Grantor** hereby authorizes **Beneficiary** to prepare and file financing statements, continuation statements and financing statement amendments in such form as **Beneficiary** may require to perfect or continue the perfection of this security interest. If an **Event of Default** (as hereinafter defined) has occurred and is continuing, **Beneficiary** will have the remedies of a secured party under the **UCC**, in addition to all remedies provided by this **Instrument** or existing under applicable law. In exercising any remedies, **Beneficiary** may exercise its remedies against the **Collateral** separately or together, and in any order, without in any way affecting the availability of **Beneficiary's** other remedies.

This **Instrument** also constitutes a financing statement with respect to any part of the **Premises** that is or may become a fixture, if permitted by applicable law.

3. Taxes and Other Charges. **Grantor** is responsible for the payment of all taxes ("**Taxes**"), assessments for local improvements ("**Assessment**"), rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the **Premises**, and all other governmental levies and charges (collectively, the "**Impositions**"), of every kind and nature whatsoever. Upon **Beneficiary's** request, **Grantor** shall deliver to **Beneficiary** within five (5) days of any such request, proof of payment of any and all **Impositions**, in form satisfactory to **Beneficiary**.

4. Insurance. **Grantor** shall keep the **Premises** insured in accordance with the provisions of the **Loan Agreement**.

5. Liens. **Grantor** shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the **Premises** or any portion thereof, or against the rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance, whether senior or junior to the lien of this **Instrument**, other than the lien of this **Instrument** and the **Permitted Encumbrances**.

6. Due on Sale or Encumbrance. Should the title to the **Premises**, or any part thereof or any interest therein, be transferred to any **Person**, firm or entity other than the **Borrower**, or should the ownership of the **Premises**, or any part thereof, become vested in any owner other than the **Borrower**, or should any lien, mortgage or any other encumbrance, voluntary or involuntary, be placed against the **Premises**, or in any of the foregoing events, the entire principal balance due under the **Note**, together with all accrued interest thereunder, shall at the election of **Beneficiary**, be and become immediately due and payable in full, subject to applicable law, and **Beneficiary** shall be entitled to pursue all remedies provided for in this **Instrument** or at law, including without limitation, foreclosure of the lien of this **Instrument**.

7. Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. (A) As part of the consideration for the **Indebtedness**, **Grantor** absolutely and unconditionally assigns and transfers to **Beneficiary** all **Rents**. It is the intention of **Grantor** to establish a present, absolute and irrevocable transfer and assignment to **Beneficiary** of all **Rents** and to authorize and empower **Beneficiary** to collect and receive all **Rents** without the necessity of further action on the part of the **Borrower**. Promptly upon request by **Beneficiary**, **Grantor** agrees to execute and deliver such further assignments as **Beneficiary** may from time to time require. **Grantor** and **Beneficiary** intend this assignment of **Rents** to be immediately effective and to constitute an absolute, present, and unconditional assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of **Rents**, and for no other purpose, the **Rents** will not be deemed to be a part of the **Premises**. However, if this present, absolute, and unconditional assignment of the **Rents** is not enforceable by its terms under the laws of the state of Utah, then the **Rents** will be included as a part of the **Premises** and it is the intention of **Grantor** that in this circumstance this **Instrument** create and perfect a lien on the **Rents** in favor of **Beneficiary**, which lien will be effective as of the date of this **Instrument**. (B) Until the occurrence of an **Event of Default**, **Beneficiary** hereby

grants to **Grantor** a revocable license to collect and receive all the **Rents**, to hold all the **Rents** in trust for the benefit of **Beneficiary** and to apply all the **Rents** to pay the installments of interest and principal then due and payable under the **Note** and the other amounts then due and payable under the other **Loan Documents**, including the **Taxes, Impositions, Assessments, and Insurance**, and to pay the current costs and expenses of managing, operating and maintaining the **Premises**, tenant improvements and other capital expenditures. So long as no **Event of Default** has occurred and is continuing, the **Rents** remaining after application pursuant to the preceding sentence may be retained by **Grantor** free and clear of, and released from, **Beneficiary's** rights with respect to the **Rents** under this **Instrument**. After the occurrence of an **Event of Default**, and during the continuance of such **Event of Default**, **Grantor** authorizes **Beneficiary** to collect, sue for, and compromise the **Rents** and directs each tenant of the **Premises** to pay all the **Rents** to, or as directed by, **Beneficiary**. From and after the occurrence of an **Event of Default**, and during the continuance of such **Event of Default**, and without the necessity of **Beneficiary** entering upon and taking and maintaining control of the **Premises** directly, or by a receiver, **Grantor's** license to collect the **Rents** will automatically terminate and **Beneficiary** will, without notice, be entitled to all the **Rents** as they become due and payable, including the **Rents** then due and unpaid. **Grantor** will pay to **Beneficiary** upon demand all the **Rents** to which **Beneficiary** is entitled. At any time on or after the date of **Beneficiary's** demand for the **Rents**, **Beneficiary** may give, and **Grantor** hereby irrevocably authorizes **Beneficiary** to give, notice to all tenants of the **Premises** instructing them to pay all **Rents** to **Beneficiary**. *No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Grantor any amounts which are actually paid to Beneficiary in response to such a notice.* Any such notice by **Beneficiary** will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. **Grantor** will not interfere with and will cooperate with **Beneficiary's** collection of such **Rents**. (C) If an **Event of Default** has occurred and is continuing, then **Beneficiary** will have each of the following rights and may take any of the following actions: (i) **Beneficiary** may, regardless of the adequacy of **Beneficiary's** security or the solvency of **Grantor** and even in the absence of waste, enter upon and take and maintain full control of the **Premises** in order to perform all acts that **Beneficiary** in its discretion determines to be necessary or desirable for the operation and maintenance of the **Premises**, including the execution, cancellation, or modification of the Leases, the collection of all the **Rents**, the making of repairs to the **Premises** and the execution or termination of contracts providing for the management, operation or maintenance of the **Premises**, for the purposes of enforcing the assignment of the **Rents** pursuant to Section 7(A) of this **Instrument**, protecting the **Premises** or the security of this **Instrument**, or for such other purposes as **Beneficiary**, in its discretion, may deem necessary or desirable. (ii) Alternatively, if an **Event of Default** has occurred and is continuing, regardless of the adequacy of **Beneficiary's** security, without regard to **Grantor's** solvency and without the necessity of giving prior notice (oral or written) to **Grantor**, **Beneficiary** may apply to any court having jurisdiction for the appointment of a receiver for the **Premises** to take any or all of the actions set forth in the preceding sentence. If **Beneficiary** elects to seek the appointment of a receiver for the **Premises** at any time after an **Event of Default** has occurred and is continuing, **Grantor's**, by its execution of this **Instrument**, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. (iii) If **Grantor** is a housing cooperative corporation or association, **Grantor**

hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the **Note** and the other amounts then due and payable under the other **Loan Documents**, including the **Taxes, Impositions, Assessments, and Insurance**, it being acknowledged and agreed that the **Indebtedness** is an obligation of **Grantor** and must be paid out of maintenance charges payable by **Grantor's** tenant shareholders under their proprietary leases or occupancy agreements. **(iv) Beneficiary** or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the **Premises**. **(v)** Immediately upon appointment of a receiver or immediately upon **Beneficiary's** entering upon and taking possession and control of the **Premises**, **Grantor** will surrender possession of the **Premises** to **Beneficiary** or the receiver, as the case may be, and will deliver to **Beneficiary** or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the **Premises** and all security deposits and prepaid **Rents**. **(vi)** If **Beneficiary** takes possession and control of the **Premises**, then **Beneficiary** may exclude **Grantor** and its representatives from the **Premises**. **Grantor** acknowledges and agrees that the exercise by **Beneficiary** of any of the rights conferred under this **Section 7** will not be construed to make **Beneficiary** a mortgagee-in-possession of the **Premises** so long as **Beneficiary** has not itself entered into actual possession of the **Land and Improvements**. **(D)** If **Beneficiary** enters the **Premises**, **Beneficiary** will be liable to account only to **Grantor** and only for those **Rents** actually received. Except to the extent of **Beneficiary's** gross negligence or willful misconduct, **Beneficiary** will not be liable to the **Borrower**, anyone claiming under or through **Grantor** or anyone having an interest in the **Premises**, by reason of any act or omission of **Beneficiary** under **Section 7(C)** of this **Instrument**, and **Grantor** hereby releases and discharges **Beneficiary** from any such liability to the fullest extent permitted by law. If the **Rents** are not sufficient to meet the costs of taking control of and managing the **Premises** and collecting the **Rents**, any funds expended by **Beneficiary** for such purposes will become an additional part of the **Indebtedness**. **(E)** If the **Rents** are not sufficient to meet the costs of taking control of and managing the **Premises** and collecting the **Rents**, any funds expended by **Beneficiary** for such purposes will become an additional part of the **Indebtedness** as provided in **Section 10** of this **Instrument**. **(F)** Any entering upon and taking of control of the **Premises** by **Beneficiary** or the receiver, as the case may be, and any application of **Rents** as provided in this **Instrument** will not cure or waive any **Event of Default** or invalidate any other right or remedy of **Beneficiary** under applicable law or provided for in this **Instrument**.

8. Assignment of Leases; Leases Affecting the Premises. **(A)** As part of the consideration for the **Indebtedness**, **Grantor** absolutely and unconditionally assigns and transfers to **Beneficiary** all of **Grantor's** right, title, and interest in, to, and under the **Leases**, including **Grantor's** right, power and authority to modify the terms of any such **Lease**, or extend or terminate any such **Lease**. It is the intention of **Grantor's** to establish a present, absolute and irrevocable transfer and assignment to **Beneficiary** of all of **Grantor's** right, title and interest in, to, and under the **Leases**. **Grantor** and **Beneficiary** intend this assignment of the **Leases** to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the **Leases**, and for no other purpose, the **Leases** will not be deemed to be a part of the **Premises**. However, if this present, absolute and unconditional assignment of the **Leases** is not enforceable by its terms under the laws of the state of Utah, then the **Leases** will

be included as a part of the **Premises** and it is the intention of **Grantor** that in this circumstance this **Instrument** create and perfect a lien on the **Leases** in favor of **Beneficiary**, which lien will be effective as of the date of this **Instrument**. **(B)** Until **Beneficiary** gives **Notice to Grantor** of **Beneficiary's** exercise of its rights under this **Section 8**, **Grantor** will have all rights, power and authority granted to **Grantor** under any **Lease** (except as otherwise limited by this **Section 8** or any other provision of this **Instrument**), including the right, power and authority to modify the terms of any **Lease** or extend or terminate any **Lease**. Upon the occurrence of an **Event of Default**, and during the continuance of such **Event of Default**, the permission given to **Grantor** pursuant to the preceding sentence to exercise all rights, power and authority under **Leases** will automatically terminate. **Grantor** will comply with and observe **Grantor's** obligations under all **Leases**, including **Grantor's** obligations pertaining to the maintenance and disposition of tenant security deposits. **(C)** **Grantor** acknowledges and agrees that the exercise by **Beneficiary**, either directly or by a receiver, of any of the rights conferred under this **Section 8** will not be construed to make **Beneficiary** a mortgagee-in-possession of the **Premises** so long as **Beneficiary** has not itself entered into actual possession of the **Land** and the **Improvements**. The acceptance by **Beneficiary** of the assignment of the **Leases** pursuant to **Section 8(A)** of this **Instrument** will not at any time or in any event obligate **Beneficiary** to take any action under this **Instrument** or to expend any money or to incur any expenses. Except to the extent of **Beneficiary's** gross negligence or willful misconduct, **Beneficiary** will not be liable in any way for any injury or damage to the **Person** or property sustained by any **Person** or **Persons** in or about the **Premises**. Prior to **Beneficiary's** actual entry into and taking possession of the **Premises**, **Beneficiary** will not be obligated for any of the following: **(i)** performing any of the terms, covenants and conditions contained in any **Lease**, or any obligation with respect to any **Lease**; **(ii)** appearing in or defending any action or proceeding relating to the **Lease** or the **Premises**; **(iii)** the operation, control, care, management or repair of the **Premises** or any portion of the **Premises**. The execution of this **Instrument** by **Grantor** will constitute conclusive evidence that all responsibility for the operation, control, care, management, and repair of the **Premises** are and will be that of **Grantor**, prior to such actual entry and taking of possession. **(D)** Upon delivery of **Notice** by **Beneficiary** to **Grantor** of **Beneficiary's** exercise of its rights under this **Section 8** at any time after the occurrence of an **Event of Default**, and during the continuance of such **Event of Default**, and without the necessity of **Beneficiary** entering upon and taking and maintaining control of the **Premises** directly, by a receiver, or by any other manner or proceeding permitted by the laws of the state of Utah, **Beneficiary** immediately will have all rights, powers and authority granted to **Grantor** under any **Lease**, including the right, power and authority to modify the terms of any such **Lease**, or extend or terminate any such **Lease**. **(E)** **Grantor** will, promptly upon **Beneficiary's** request, deliver to **Beneficiary** an executed copy of each **Lease** then in effect. **(F)** If **Grantor** is a cooperative housing corporation or association, notwithstanding anything to the contrary contained in this **Instrument**, so long as **Grantor** remains a cooperative housing corporation or association and is not in breach of any covenant of this **Instrument**, **Beneficiary** consents to the following: **(i)** **Grantor** may execute leases of apartments for a term in excess of **two (2) years** to a tenant shareholder of **Grantor** so long as such leases, including proprietary leases, are and will remain subordinate to the lien of this **Instrument**. **(ii)** **Grantor** may surrender or terminate such leases of apartments where the surrendered or terminated lease is immediately replaced or where **Grantor** uses its best efforts to secure such immediate replacement by a newly-executed lease of the same apartment

to a tenant shareholder of **Grantor**. However, no consent is given by **Beneficiary** to any execution, surrender, termination or assignment of a lease under terms that would waive or reduce the obligation of the resulting tenant shareholder under such lease to pay cooperative assessments in full when due or the obligation of the former tenant shareholder to pay any unpaid portion of such assessments.

9. Application of Payments. If at any time **Beneficiary** receives, from **Grantor** or otherwise, any amount applicable to the **Indebtedness** which is less than all amounts due and payable at such time, then **Beneficiary** may apply that payment to amounts then due and payable in any manner and in any order determined by **Beneficiary**, in its discretion. Neither **Beneficiary's** acceptance of an amount that is less than all amounts then due and payable nor **Beneficiary's** application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the **Indebtedness**, **Grantor's** obligations under this **Instrument**, the **Note** and all other **Loan Documents** will remain unchanged.

10. Protection of Beneficiary's Security; Instrument Secures Future Advances. If **Grantor** should fail to perform any of its obligations under this **Instrument** or any other **Loan Document**, or if any action or proceeding is commenced which purports to affect the **Premises**, **Beneficiary's** security, or **Beneficiary's** rights under this **Instrument**, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of **Hazardous Materials Laws** (as hereinafter defined), fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then **Beneficiary**, at **Beneficiary's** option may make such appearances, file such documents, disburse such sums and take such actions as **Beneficiary** reasonably deems necessary to perform such obligations of **Grantor** and to protect **Beneficiary's** interest, including all of the following: (i) payment of attorney's fees and costs; (ii) enter upon the **Premises** to make repairs or secure the **Premises**; procure insurance as required by the **Loan Agreement**; (iii) pay any amounts which **Grantor** has failed to pay under this **Instrument**, the **Loan Agreement**, or any of the **Loan Documents**; (iv) perform any of **Grantor's** obligations under the **Loan Agreement**; (v) make advances to pay, satisfy or discharge any obligation of the **Grantor** for the payment of money that is secured by a lien on the **Premises**. Any amounts disbursed by **Beneficiary** under this **Section 10** or under any other provision of this **Instrument** that treats such disbursement as being made under this **Section 10**, will be secured by this **Instrument**, will be added to, and become part of, the principal component of the **Indebtedness**, will be immediately due and payable and will bear interest from the date of disbursement until paid at the **Default Rate** (as defined in the **Note**). Nothing in this **Section 10** will require **Beneficiary** to incur any expense or take any action. The provisions of this **Section 10**, including the obligation to indemnify **Beneficiary**, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this **Instrument** and shall not be affected by **Beneficiary's** acquisition of any interest in the **Premises**, whether by foreclosure or otherwise. As used herein, the term "**Hazardous Materials Law**" and "**Hazardous Materials Laws**" means any and all federal, state and local laws, ordinances, regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future, including all amendments, that relate to **Hazardous Materials** (as hereinafter defined) or the protection of human health or the environment and apply to

Grantor or to the **Premises**. **Hazardous Materials Laws** include the **Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.**, the **Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq.**, the **Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.**, the **Clean Water Act, 33 U.S.C. Section 1251, et seq.**, and the **Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.**, and their state analogs. As used herein, the term "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (PCBs) and compounds containing them; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the **Premises** are prohibited by any governmental authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" by or within the meaning of any **Hazardous Materials Law**, or (ii) is regulated in any way by or within the meaning of any **Hazardous Materials Law**.

11. Events of Default. An **Event of Default** under the **Note**, the **Loan Agreement**, or any other **Loan Documents** will constitute an **Event of Default** under this **Instrument**. Upon the occurrence of an **Event of Default**, the **Indebtedness** shall become due and payable forthwith at the option of **Beneficiary**.

12. Remedies Cumulative. Each right and remedy provided in this **Instrument** is distinct from all other rights or remedies under this **Instrument**, the **Loan Agreement** or any other **Loan Document** or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. **Beneficiary's** exercise of any particular right or remedy will not in any way prevent **Beneficiary** from exercising any other right or remedy available to **Beneficiary**. **Beneficiary** may exercise any such remedies from time to time and as often as **Beneficiary** chooses.

13. Waiver of Statute of Limitations, Offsets, and Counterclaims. **Grantor** waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this **Instrument** or to any action brought to enforce any **Loan Document**. **Grantor** hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by **Beneficiary** or otherwise to offset any obligations to make the payments required by the **Loan Documents**. No failure by **Beneficiary** to perform any of its obligations under this **Instrument** will be a valid defense to, or result in any offset against, any payments that **Grantor** is obligated to make under any of the **Loan Documents**.

14. Waiver of Marshalling. Notwithstanding the existence of any other security interests in the **Premises** held by **Beneficiary** or by any other party, **Beneficiary** will have the right to determine the order in which any or all of the **Premises** will be subjected to the remedies provided in this **Instrument**, the **Note**, the **Loan Agreement**, or any other **Loan Document**, or applicable law. **Beneficiary** will have the right to determine the order in which any or all portions of the **Indebtedness** are satisfied from the proceeds realized upon the exercise of such remedies. **Grantor** and any party who now or in the future acquires a security interest in the

Premises and who has actual or constructive notice of this **Instrument** waives any and all right to require the marshalling of assets or to require that any of the **Premises** be sold in the inverse order of alienation or that any of the **Premises** be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this **Instrument**.

15. Further Assurances. **Grantor** will deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as **Beneficiary** may require from time to time in order to better assure, grant, and convey to **Beneficiary** the rights intended to be granted, now or in the future, to **Beneficiary** under this **Instrument** and the **Loan Documents**.

16. Governing Law; Consent to Jurisdiction and Venue. This **Instrument**, and the provisions for the creation, perfection, priority, enforcement, and foreclosure of the liens and security interests created in the **Premises** will be governed by, and construed in accordance with, the laws of the state of Utah. Notwithstanding the foregoing, the law of the state of Connecticut shall govern the validity and enforceability of all **Loan Documents**, and the **Indebtedness** arising hereunder (but the foregoing shall not be construed to limit **Beneficiary's** rights with respect to such security interest created in the state of Utah). Nothing in this **Section 16** is intended to limit **Beneficiary's** right to bring any suit, action or proceeding relating to matters under this **Instrument**, the **Note**, the **Loan Agreement**, or any of the **Loan Documents** in any court of any other jurisdiction.

17. Notices. All notices, demands, and other communications required hereunder or otherwise related to this **Instrument** must be given in accordance with the terms and conditions set forth in the **Loan Agreement**.

18. Successors and Assigns. This **Instrument** will bind the respective successors and assigns of **Grantor** and **Beneficiary**, and the rights granted by this **Instrument** will inure to **Beneficiary's** successors and assigns.

19. Joint and Several Liability. If more than one party signs this **Instrument** as **Grantor**, the obligations of such **Persons** will be joint and several.

20. Relationship of Parties; No Third-Party Beneficiary. The relationship between **Beneficiary** and **Grantor** will be solely that of creditor and debtor, respectively, and nothing contained in this **Instrument** will create any other relationship between **Beneficiary** and **Grantor**. Nothing contained in this **Instrument** will constitute **Beneficiary** as a joint venturer, partner or agent of **Grantor**, or render **Beneficiary** liable for any debts, obligations, acts, omissions, representations or contracts of **Grantor**. No creditor of any party to this **Instrument** and no other **Person** will be a third-party beneficiary of this **Instrument** or any other **Loan Document**.

21. Severability; Amendments; Construction The invalidity or unenforceability of any provision of this **Instrument** will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This **Instrument** contains the entire agreement among the parties as to the rights granted and the obligations assumed in this **Instrument**. This **Instrument** may not be amended or modified except by a

writing signed by the party against whom enforcement is sought. The captions and headings of the sections of this **Instrument** are for convenience only and will be disregarded in construing this **Instrument**. Any reference in this **Instrument** to a "Section" will, unless otherwise explicitly provided, be construed as referring to a section of this **Instrument**. Any reference in this **Instrument** to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this **Instrument** includes the plural and use of the plural includes the singular. As used in this **Instrument**, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation." Unless the context requires otherwise, any definition of or reference to any agreement, instrument, or other document in this **Instrument** will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this **Instrument**). Any reference in this **Instrument** to any **Person** will be construed to include such **Person's** successors and assigns. Any capitalized term not specifically defined in this **Instrument** will have the meaning ascribed to that term in the **Loan Agreement**. The term "Person" as used herein, shall mean any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

22. Subrogation. If, and to the extent that, the proceeds of the loan evidenced by the **Note**, or subsequent advances under **Section 10** of this **Instrument**, are used to pay, satisfy or discharge a prior lien, such loan proceeds or advances will be deemed to have been disbursed by **Beneficiary** at **Grantor's** request, and **Beneficiary** will automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the prior lien, whether or not the prior lien is released.

23. Confession of Judgment in Ejectment. To the extent permissible under the laws of the state of Utah, at any time after an **Event of Default**, regardless of whether **Beneficiary** has asserted any other right or exercised any other remedy under this **Instrument** or any of the other **Loan Documents**, it shall be lawful for any attorney of any court to confess judgment in ejectment against **Grantor** and all **Persons** claiming under **Grantor** for the recovery by **Beneficiary** of possession of all or any part of the **Premises**, for which this **Instrument** shall be sufficient warrant. If for any reason after such action shall have commenced the same shall be discontinued and the possession of the **Premises** shall remain in or be restored to **Grantor**, **Beneficiary** shall have the right upon subsequent default or defaults to bring one or more action or actions as hereinabove set forth to recover possession of all or any part of the **Premises**.

24. Acceleration; Remedies. (A) At any time during the existence of an **Event of Default**, **Beneficiary**, at its option, may declare the **Indebtedness** to be immediately due and payable without further demand and may invoke the **POWER OF SALE** and any other remedies permitted by applicable law or provided in this **Instrument**, the **Loan Agreement** or in any other **Loan Document**. **Grantor** acknowledges that the **POWER OF SALE** granted in this **Instrument** may be exercised by **Beneficiary** without prior judicial hearing. **Grantor** shall

have has the right to bring an action to assert the non-existence of an **Event of Default** or any other defense of **Grantor** to acceleration and sale. **Beneficiary** will be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs and costs of documentary evidence, abstracts and title reports. **(B)** If the **POWER OF SALE** is invoked, the **Trustee** will execute a written notice of the occurrence of an **Event of Default** and of **Beneficiary's** election to cause the **Premises** to be sold and will record such notice in each county in which the **Premises** are located. **Beneficiary** or the **Trustee** will mail notice of the default to **Grantor** in the manner provided by the laws of the state of Utah. **Beneficiary** or the **Trustee** will mail notice to **Grantor** the notice of the default and to such other **Persons** as the laws of Utah prescribe. The **Trustee** will give public notice of sale and will sell the **Premises** in accordance with the laws of the state of Utah. The **Trustee** may sell the **Premises** at the time and place and under the terms designated in the notice of sale in one or more parcels. The **Trustee** may postpone sale of all or any part of the **Premises** by public announcement at the time and place of any previously scheduled sale. **Beneficiary** or its designee may purchase the **Premises** at any sale. **(C)** Within a reasonable time after the sale, the **Trustee** will deliver to the purchaser at the sale, a deed conveying the **Premises** so sold without any covenant or warranty, express or implied. The recitals in the trustee's deed will be *prima facie* evidence of the truth of the statements made therein. The **Trustee** will apply the proceeds of the sale in the following order: **(i)** To all costs and expenses of the sale, including the **Trustee's** fees not to exceed five percent (5%) of the gross sales price, attorneys' fees and costs and costs of title evidence; **(ii)** To the **Indebtedness** in such order as **Beneficiary**, in **Beneficiary's** discretion, directs; and **(iii)** The excess, if any, to the **Person** or **Persons** legally entitled thereto or to the county clerk of the county in which the sale took place.

25. Reconveyance. Upon payment of the **Indebtedness**, **Beneficiary** will request the **Trustee** to reconvey the **Premises** and will surrender this **Instrument** and the **Note** to the **Trustee**. The **Trustee** will reconvey the **Premises** without warranty to the **Person** or **Persons** legally entitled thereto. Such **Person** or **Persons** will pay the **Trustee's** reasonable costs incurred in so reconveying the **Premises**.

26. Substitute Trustee. **Beneficiary**, at its option, may, from time to time, remove the **Trustee** and appoint a successor trustee to any **Trustee** appointed under this **Instrument**. Without conveyance of the **Premises**, the successor trustee will succeed to all the title, power and duties conferred upon the **Trustee** in this **Instrument** and by applicable law.

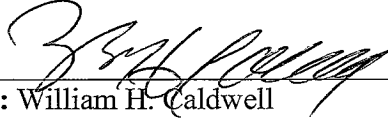
27. Request for Notices. **Grantor** requests that copies of the notice of default and notice of sale be sent to **Grantor** at **Grantor's** address at 2661 Washington Blvd, Ste #203, Ogden, UT 84401.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has signed and delivered this Deed of Trust, Assignment of Rents, and Security Agreement or has caused said instrument to be signed and delivered by its duly authorized representative on January ____, 2019.

Browning Apartments Ogden, LLC

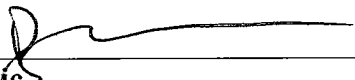
Witness: _____

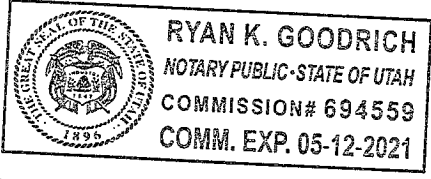
By: 
Name: William H. Caldwell
Title: Manager

Witness: _____

STATE OF Utah)
)ss. _____
COUNTY OF Deer)

I certify that on January 18, 2019, **William H. Caldwell** came before me in person and stated to my satisfaction that he/she made the attached instrument; and was authorized to and did execute this instrument on behalf of, and as Manager of Browning Apartments Ogden, LLC (the "**Company**"), the entity named in this instrument, as the free act and deed of the **Company**, by virtue of the authority granted by its operating agreement and its members.


Notary Public



SCHEDULE 1
PROPERTY DESCRIPTION

PART OF LOT 10, BLOCK 4, PLAT A, OGDEN CITY SURVEY: COMMENCING 57 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT AND RUNNING THENCE WEST 75 FEET; THENCE SOUTH 80 FEET, THENCE EAST 75 FEET, THENCE NORTH 80 FEET TO THE PLACE OF BEGINNING.

PART OF LOT 10, BLOCK 4, PLAT A, OGDEN CITY SURVEY: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT AND RUNNING THENCE WEST 57 FEET, THENCE SOUTH 80 FEET, THENCE WEST 75 FEET, THENCE SOUTH 28.5 FEET; THENCE EAST 8 RODS, THENCE NORTH 108.5 FEET TO BEGINNING. SUBJECT TO EXSTING RIGHT-OF-WAY OVER THE SOUTH 5 FEET THEREOF AND TOGETHER WITH A RIGHT-OF-WAY OVER 5 FEET ADJOINING FIRST DESRIPTION ON THE SOUTH.

For Identification Purposes Only: 2711 Washington Blvd & 375 27th Street, Ogden, UT 84401