

LINCOLN COUNTY, NV **2022-162058**
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 OFFICIAL RECORD
 AMY ELMER, RECORDER

APN: 003-053-03
NCS-1000088
WHEN RECORDED, RETURN TO:

Coats Rose, P.C.
 365 Canal Street, Suite 800
 New Orleans, Louisiana 70130
 Attn: A. Kelton Longwell

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

This Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (this **“Instrument”**) is made and executed on March 10, 2022 (the **“Closing Date”**), by and between minnie st. 2020 LLC (the **“Borrower”**), to First American Title, a Nevada corporation (the **“Trustee”**), in favor of Oak Leaf Community Development, LLC, a Montana limited liability company (the **“Lender”**).

Lender is making a loan to Borrower in the amount of Seventy Thousand and 00/100 Dollars (\$70,000.00) (the **“Loan”**). The Loan is evidenced by that certain Promissory Note dated the Closing Date in the original principal amount of the Loan, and all renewals, extensions, modifications, and replacements thereof (the **“Note”**).

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

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ARTICLE 1 DEFINITIONS

1.1 Defined Terms. When used in this Instrument, the following terms shall have the following meanings:

“**Agency**” means the State of Nevada Department of Business & Industry Housing Division, in its capacity as the designated agency of the State of Nevada to allocate tax credits, acting through any authorized representative.

“**Area Median Income**” shall be determined and adjusted for family size in accordance with guidance on the subject issued by the USDA.

“**Bridge Lender**” means Bonneville Mortgage Company, a Utah corporation.

“**Business Day**” means a day during which commercial banks in Caliente, Nevada are open for business of the nature required for the implementation or administration of this Instrument.

“**Carryover Allocation Agreement**” means the agreement to be entered into between the Agency and Borrower, whereby the Agency has agreed to allocate federal tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, for the Improvements in an amount acceptable to Lender, in its sole discretion.

“**Closing Date**” means the date of this Instrument set forth in the first paragraph on the first page of this Instrument.

“**Collateral**” means the property described in Section 2.1 of this Instrument as collateral for the Loan.

“**Event of Default**” has the meaning described in Section 11.1 of this Instrument.

“First Senior Lender” means Bonneville Mortgage Company, a Utah corporation.

“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 be friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local 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 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. Hazardous Materials expressly exclude those substances routinely used in the construction, operation and maintenance of multifamily residential properties provided that such substances are used in accordance with applicable laws.

“Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the mortgaged Land. Hazardous Materials Laws include, but are not limited to, 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.

“Impositions” has the meaning set forth in Section 7.1 hereof.

“Improvements” has the meaning set forth in Section 2.1 hereof.

“Indebtedness” means the Principal Amount and all accrued interest under the Loan, together with any additional advances, if any, and any additional amounts advanced by Lender, if any, pursuant to the Loan Documents, including, without limitation, advances made under Section 2.1 of this Instrument.

“Land” has the meaning set forth in Section 2.1 hereof.

“Leases” means 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 Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

“Limited Member” means, collectively, USA Institutional Minnie Apartments LLC, a Delaware limited liability company, and its permitted successors and assigns.

“Limited Membership Agreement” means the Amended and Restated Operating Agreement of the Borrower, dated March 10, 2022, and entered into between the Managing Member and the Limited Member, a form acceptable to Lender in its sole discretion.

“Loan Documents” means this Instrument, the Note, the UCC Fixture Filing, Guaranty, and the UCC-1 Financing Statement, together with all consents, agreements, and certificates attached as exhibits, and all other documents, whether now or hereafter existing, executed in connection with the Loan.

“Managing Member” means Minnie St. 2020 Managing Member, LLC, a Nevada limited liability company.

“Maturity Date” means March 10, 2062 whereupon the Indebtedness and all accrued and unpaid interest shall be due and payable in accordance with the Note.

“Mortgaged Property” has the meaning set forth in Section 2.4 hereof.

“Personality” shall have the meaning ascribed to such term in Section 2.2 hereof.

“Principal Amount” means Seventy Thousand and 00/100 Dollars (\$70,000].00).

“Real Property” shall have the meaning ascribed to such term in Section 2.1 hereof.

“Schedule of Title Exceptions” shall have the meaning ascribed to such term in Section 4.1 hereof.

“Senior Loan(s)” means, individually or collectively, as the context may require, (a) the construction and term loan in the amount of \$1,550,000.00, as evidenced by that certain Multifamily Note, dated March 10, 2022, executed by the Borrower in favor of the First Senior Lender; (b) the bridge loan in the amount of \$1,300,000.00, as evidence by that certain Bridge Loan Promissory Note, dated March 10, 2022, executed by the Borrower in favor of the Bridge Lender; (c) the HOME Loan in the amount of \$400,000, as evidenced by that certain HOME Promissory Note, executed by the Borrower in favor of the Senior.

“Senior Loan Documents” means all agreements and documents executed by the Borrower in connection with the Senior Loans.

“Third Mortgage Lender” means the Nevada Housing Division, a division of the Agency.

“Title Policy” means the policy of title insurance described in Section 5.7 of the Loan Agreement.

“UCC-1 Financing Statement” means collectively the UCC-1 Financing Statements in connection with the Loan.

“UCC Fixture Filing” means the UCC Fixture Filing in connection with the Loan.

“USDA” means the United States Department of Agriculture, Rural Development.

ARTICLE 2 GRANT AND CONVEYANCE

2.1 General Grant. Borrower hereby irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale, the Real Property (as hereafter defined), the following described real property (the “**Real Property**”) located in Lincoln County, State of Nevada:

- (a) All of the right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to the land located in Lincoln County, State of Nevada (the “**Land**”) described in **Exhibit A** attached hereto and incorporated herein by this reference.
- (b) All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to:
 - (i) All buildings, improvements, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments now or hereafter constructed upon, and all renewals and replacements of, any of the foregoing, which are now or hereafter shall be constructed or affixed or constructively affixed to the Land, or to any portion of the Land (the “**Improvements**”); and
 - (ii) All easements, licenses, streets, ways, alleys, roads, passages, rights-of-way, minerals, oil, gas and other hydrocarbon substances, and all as-extracted collateral as defined in the Uniform Commercial Code of the state where the Land is located, development rights, all development agreements, air rights, irrigation rights, water, water courses, water rights (including claims, decrees, permits, and licenses), and water stock (whether now owned or hereafter acquired by Borrower and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Land or to any portion of the Land.
 - (iii) All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all of the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to any of the Land or the Improvements, or any portion of the Land or the Improvements, or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims, and demands of every nature whatsoever, at law or in equity, which Borrower may have or may hereafter acquire in and to the Land, the Improvements, or any portion thereof.

- (iv) All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all leases and subleases of all or any portion of the Land or the Improvements now or hereafter existing or entered into, and all lease agreements and documents evidencing the same; and all right, title and interest of Borrower thereunder, including without limitation, all rents, sub-rents and other amounts received for use of all or any portion of the Land or the Improvements, including without limitation, any and all rental agreements and arrangements of any kind now owned or hereafter acquired, and all proceeds from such leases, rents, sub-rents, issues, royalties, security deposits, income and profits of and from the Land, the Project, the Improvements, or any portion thereof.

2.2 Security Interest. Borrower hereby assigns and grants to Lender a security interest in the following described property (collectively the “**Personalty**”), whether now or hereafter existing, and in which Borrower now has or hereafter obtains any right, title, estate or interest, but only to the extent of Borrower’s ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof:

- (a) All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to:
 - (i) all goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Mortgaged Property, delivered to the Mortgaged Property for incorporation or use in any construction, renovation, operation or maintenance of the Mortgaged Property, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Land or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Land;
 - (ii) all furniture, fixtures and equipment as equipment is defined in the Uniform Commercial Code, wherever located, and all related right, title and interest of Borrower, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein;
 - (iii) all architectural, engineering, development, construction and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Mortgaged Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and

- architect thereunder, relating to the construction, development, ownership or maintenance of the Mortgaged Property;
- (iv) all engineering reports, surveys, soil reports and other documents relating to the Land;
 - (v) all modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; and
 - (vi) all proceeds of each of the foregoing.
- (b) all right, title interest and estate of Borrower, now owned or hereafter acquired, in and to:
- (i) all contracts, permits, franchises, privileges, grants, consents, licenses, authorizations, and approvals heretofore or hereafter granted by the United States, by the State of Nevada or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Borrower and utilized in connection with the Mortgaged Property or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law;
 - (ii) all names under or by which the Mortgaged Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Borrower's ownership and operation of the Mortgaged Property;
 - (iii) all contracts, contract rights, rights to payment, general intangibles, documents, instructions, accounts, water stock arising in connection with Borrower's ownership, legal or equitable claims, judgments, and awards now or hereafter accruing to the benefit of Borrower respecting the Mortgaged Property, specifically including, without limitation, all architectural, development and construction contracts, and all construction cost guarantee contracts relating to the Mortgaged Property;
 - (iv) all documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Mortgaged Property; and
 - (v) all amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

- (c) **Awards.** All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to:
- (i) all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Mortgaged Property or any portion of the Mortgaged Property, or of any other Improvements now or hereafter situate thereon or any estate or easement in the Mortgaged Property (including any awards for change of grade of streets);
 - (ii) all insurance policies and all proceeds of insurance paid on account of any partial or total destruction of the Improvements or any portion thereof;
 - (iii) all causes of action and recoveries for any loss or diminution in the value of the Mortgaged Property; and
 - (iv) all proceeds of each of the foregoing.
- (d) **Plans and Utility Taps.** All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all Plans and any and all replacements, modifications, and amendments thereto and any and all contracts, agreements or commitments between Borrower and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Mortgaged Property, subject to the Senior Loan Documents. Borrower hereby irrevocably appoints Lender as Borrower's true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Borrower necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Mortgaged Property.
- (e) **Loan Proceeds.** All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all proceeds of the Loan made by Lender to Borrower for construction of the Improvements which proceeds are held by Lender, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements to secure any and all of Borrower's obligations to Lender.
- (f) **Contracts.** All right, title, interest and estate of Borrower, now owned or hereafter acquired, under any other contract, subcontract or agreement, for the construction and completion of the Improvements and all contracts and agreements which have been or shall hereinafter be entered into relating to the construction, development, sale, lease, operation, or use of all or a portion of the Mortgaged Property, and all governmental licenses or permits obtained for the lawful construction of the Improvements.

- (g) **Accounts.** All accounts of Borrower, presently existing or hereafter arising, including all accounts as defined in the Uniform Commercial Code, as amended, established in connection with or by reason of Borrower's ownership, construction, development, sale, lease, operation or use of the Mortgaged Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.
- (h) **Documents.** All documents of Borrower, presently existing or hereafter arising, including all documents as defined in the Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Borrower's ownership, construction, development, sale, lease, operation or use of the Mortgaged Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.
- (i) **Instruments.** All instruments of Borrower, presently existing or hereafter arising, including all instruments as defined in the Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Borrower's ownership, construction, development, sale, lease, operation or use of the Mortgaged Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.
- (j) **General Intangibles.** All general intangibles of Borrower, presently existing or hereafter arising, including general intangibles as defined in the Uniform Commercial Code, including subsidy or similar payments received from any sources, including a governmental authority, including, without limitation, all housing assistance payments contracts made under Section 8 of the United States Housing Act of 1937 (42 USC §1437f) or in connection with any USDA or other federal or state government program; choses in action, proceeds, contracts, distributions, dividends, refunds, security deposits, judgments, insurance claims, any right to payment of any nature, intellectual property rights or licenses, any other rights or assets of Borrower customarily or for accounting purposes classified as general intangibles, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

2.3 Security Agreement. This Instrument constitutes a Security Agreement with respect to the Personalty, and Lender shall have all of the rights and remedies of a secured party under the Loan Documents and the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Borrower and Lender acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Borrower, regardless of when advances to Borrower are actually made or when the Mortgaged Property is acquired.

2.4 Mortgaged Property. The Real Property and the Personalty are sometimes hereinafter collectively referred to as the "**Mortgaged Property.**"

2.5 Fixture Filing. This Instrument constitutes a fixture filing under the Nevada Uniform Commercial Code. The addresses of the secured party (Lender) and the debtor (Borrower) are set forth in Section 12.1 hereof. This Instrument is to be recorded in the real estate records in the Recorder's office of the county in which the Real Property is located. Borrower is the record owner of the Real Property.

ARTICLE 3 OBLIGATIONS SECURED

3.1 Obligations Secured. This Instrument is given for the purpose of securing to Lender the repayment of the Note and all Indebtedness and all renewals, extensions and modifications of the Note and the Indebtedness, and the performance of all covenants and agreements of Borrower contained in the Loan Documents. The Indebtedness also includes (a) the payment of all sums expended and advanced by Trustee or Lender under the terms of this Instrument, the Loan Agreement, or any other Loan Document, and (b) the payment and performance of any other note or obligation reciting that it is secured by this Instrument. Borrower expressly acknowledges its mutual intent with Lender that the security interest created by this Instrument secures any and all present and future debts, obligations, and liabilities of Borrower to Lender without any limitation whatsoever.

3.2 Subordination. This Instrument is subordinated to the Senior Lenders as required by the Senior Loan Documents.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Property. Borrower represents and warrants to Lender as follows:

- (a) Borrower is the owner of fee simple marketable title in and to the Real Property;
- (b) Borrower shall defend title to the Mortgaged Property against all claims and demands whatsoever;
- (c) with the exception of such liens, matters created or permitted pursuant to or by the Loan Documents, and encumbrances that have been approved by Lender to appear as exceptions to coverage in the Title Policy and accepted by Lender contemporaneously with the execution of this Instrument (the "**Schedule of Title Exceptions**"), the Mortgaged Property is free and clear of all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever in favor of any third party;
- (d) with the exception of those matters identified in the Schedule of Title Exceptions, the lien created by this Instrument upon the Mortgaged Property is a good and valid first lien, free and clear of all liens, encumbrances and exceptions;
- (e) no Hazardous Materials have been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Land or the Improvements in violation of any Environmental Laws;

- (f) Borrower has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Land or the Improvements;
- (g) Borrower's principal place of business is located in the state of Nevada and Borrower's state of organization is Nevada;
- (h) Borrower's exact legal name is as set forth in the first paragraph of this Instrument;
- (i) Borrower is the owner, or upon acquisition thereof, will be the owner of the Personalty;
- (j) the Personalty is, or upon acquisition the matters identified in the Schedule of Title Exceptions, will be free and clear of all liens, claims, encumbrances, restrictions, charges, and security interests in favor of any third party except for the matters identified in the Schedule of Title Exceptions; and
- (k) the Personalty will be located in the State of Nevada, and other than temporary (not to exceed three (3) months) uses outside that state in the ordinary course of Borrower's business, will not be removed from that state without the prior written consent of Lender.

ARTICLE 5 MAINTENANCE OF MORTGAGED PROPERTY

5.1 Maintenance. Borrower shall do each of the following: (a) maintain the Mortgaged Property at all times in good condition and repair; (b) not commit any waste of the Mortgaged Property, or remove, damage, demolish, or structurally alter any of the Improvements; (c) complete promptly and in a good and workmanlike manner any Improvement which may be constructed on the Land; (d) except to the extent that insurance proceeds are applied by Lender to the satisfaction of the Indebtedness in accordance with the Loan Agreement, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof, which may for any reason be damaged or destroyed; (e) comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Mortgaged Property; and (f) not commit or permit any act upon the Mortgaged Property in violation of law.

ARTICLE 6 INDEMNIFICATION AND OFF SET

6.1 Indemnification. Borrower hereby indemnifies and holds Lender harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, the Note, the Loan Agreement, this Instrument, any other Loan Documents evidencing or securing the Note, or the construction, use or occupation of the Mortgaged Property, or any part thereof, or the Land. Notwithstanding the foregoing, Borrower shall not be liable for any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to (a) the gross negligence or willful misconduct of Lender, or (b) to the extent the facts, events or circumstances giving rise to such claims arise after the date that any lender takes title to the Trust Property by foreclosure, deed-in-

lieu thereof, the exercise of any power of sale or otherwise. If Lender commences an action against Borrower to enforce any of the terms, covenants or conditions of this Instrument or because of the breach by Borrower of any of the terms, covenants, or conditions, or for the recovery of any sum secured hereby, Borrower shall pay to Lender reasonable attorneys' fees and costs actually incurred by Lender. The right to such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term, covenant or condition of this Instrument, which has a material adverse effect on Lender or Lender's security interest, Lender may employ an attorney or attorneys to protect Lender's rights hereunder and in the event of such employment following any breach of Borrower, Borrower shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such material breach.

6.2 Off Set. All sums payable by Borrower under the Note and this Instrument shall be paid without notices, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Mortgaged Property or any part thereof; (b) any destruction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Instrument by any trustee or receiver of Lender, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) the occurrence of an Event of Default or any default or failure on the part of Lender to perform or comply with any of the terms, covenants or conditions of this Instrument or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

ARTICLE 7 TAXES AND IMPOSITIONS

7.1 Payment of Taxes and Impositions. Borrower shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever (including without limitation, charges and assessments on water or water stocks used on or with the Mortgaged Property and levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create, or appear to create, a lien upon the Mortgaged Property or any portion of the Mortgaged Property, or upon any equipment or other facility used in the construction, operation or maintenance of the Mortgaged Property (all of which taxes, assessments and other governmental charges of like nature are referred to as the "**Impositions**"); provided, however, that if, by law, any such Imposition is payable, or may at the election of the taxpayer be paid in installments, Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

7.2 Evidence of Payment. Borrower shall furnish Lender, within thirty (30) calendar days after the date upon which such Imposition is due and payable by Borrower, official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

7.3 Right to Contest. Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1 hereof unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to an Imposition, and unless, at Lender's option, (a) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Borrower shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Payment of Utilities. Borrower shall pay, when due, all utility charges incurred by Borrower for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are liens thereon.

8.2 Defense of Title. Borrower has and shall preserve good and marketable fee title to the Mortgaged Property free of all liens, claims, charges, security interests, encumbrances, easements or restrictions other than the matters identified in the Schedule of Title Exceptions. Except as provided otherwise in Section 7.3 hereof and with the exception of the matters identified in the Schedule of Title Exceptions, Borrower shall promptly discharge and remove any lien or security interest which has, or may have, priority over or equality with the lien and security interest created by this Instrument. Borrower shall furnish to Lender written notice of any litigation, default, lien, security interest or notice of default affecting the Mortgaged Property or title thereto, within ten (10) Business Days of initial receipt of notice of such lien, security interest, litigation or default. Borrower shall appear in and defend any action or proceeding purporting to affect the security hereof, the Mortgaged Property, or the rights or powers of Lender or Trustee. Should Lender elect to appear in or defend any such action or proceeding, Borrower shall pay all costs and expenses, including costs of evidence of title and reasonable attorneys' fees and costs actually incurred by Lender or Trustee. Borrower shall, at its cost, do, execute, acknowledge, and deliver all further deeds, conveyances, Instruments, assignments, notices of assignments, security agreements, financing statements, transfers, acts and assurances as Lender shall from time to time require, for the better perfecting, continuing, assuring, granting, conveying, assigning, transferring, and confirming unto Trustee and Lender the Mortgaged Property, and all rights hereby granted, conveyed or assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to grant, convey or

assign to Trustee or Lender, or for carrying out the intention or facilitating the performance of the terms of the Note or the other Loan Documents.

8.3 Performance in Borrower's Stead. Should Borrower fail to make any payment or to do any act as provided in this Instrument, then Lender or Trustee, but without any obligation to do so, and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Lender or Trustee being authorized to enter upon the Mortgaged Property for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Instrument; and (c) in exercising any such powers, incur any liability, or expend such reasonable amounts as Lender may deem necessary therefor, including costs of evidence of title, employment of attorneys, and payment of reasonable attorneys' fees and costs. All such amounts expended by either or both Trustee or Lender shall, at the election of Lender, be added to the principal indebtedness secured by this Instrument and shall accrue interest in accordance with the terms of the Note. Borrower hereby waives and releases all claims or causes of action which may hereafter arise in favor of Borrower against Lender by reason of any action taken by Lender pursuant to any power or authority granted in this Section, except those claims or causes of action resulting from or arising out of Lender's gross negligence or willful misconduct.

8.4 Repayment of Advances. Borrower shall immediately repay to Lender sums, with interest thereon as provided in the Note, which at any time may be paid or advanced by Lender for the payment of insurance premiums, Impositions, title searches, title reports or abstracts, and any other advances made by Lender which are reasonably necessary or desirable to maintain this Instrument as a prior, valid, and subsisting lien upon the Mortgaged Property, to preserve and protect Lender's interest in this Instrument or to preserve, repair, or maintain the Mortgaged Property. All such advances shall be wholly optional on the part of Lender, and Borrower's obligation to repay the same, with interest, to Lender shall be secured by the lien of this Instrument.

8.5 No Removal of Fixtures. Borrower shall not, during the existence of this Instrument and without the written consent of Lender, remove from the Mortgaged Property or any fixture, structure, or other improvement at any time affixed or constructively affixed to the Mortgaged Property or any portion thereof, or any Personalty, except in the ordinary course of Borrower's business.

8.6 Further Assurance. Borrower authorizes Lender to file or record, as appropriate, such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required by Lender to carry out more effectively the purposes of this Instrument and to subject to the lien, security interest and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Instrument. Borrower authorizes (to the extent such authorization is valid under applicable law) Lender to file such Uniform Commercial Code Financing Statements and Continuation Statements as Lender may deem necessary in order to perfect, or continue the perfection of, the security interests created by

this Instrument. Borrower agrees not to change Borrower's name, location or state of organization from that set forth in Section 4.1(g) hereof without thirty (30) calendar days' prior written notice to Lender.

8.7 Attornment. Borrower shall assign to Lender, as additional security for Borrower's payment of the Indebtedness, any and all existing or future lease agreements entered into by Borrower, as landlord, which pertain to the Mortgaged Property, or any portion thereof, and all such leases shall contain a covenant on the part of the tenant thereunder, enforceable by Lender, obligating such tenant, upon request of Lender, to attorn to and become a tenant of Lender, or any purchaser from Trustee or through foreclosure of this Instrument, for the unexpired term, and subject to the terms and conditions, of such future lease agreements. The assignments of lease shall be in form and content satisfactory to Lender.

8.8 No Further Encumbrances. As an express condition of Lender making the Loan, except for the Senior Loans, Borrower shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Mortgaged Property or any interest therein nor cause or allow by operation of law the encumbrance of the Mortgaged Property or any interest therein without the written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed) even though such encumbrance may be junior to the encumbrance created by this Instrument. Encumbrance of the Mortgaged Property contrary to the provisions of this Section 8.8 without the express written consent of Lender, which encumbrance continues for a period of thirty (30) calendar days following Borrower's receipt of written notice thereof, shall constitute an Event of Default and at Lender's option, Lender may declare the entire balance of principal and interest immediately due and payable, whether the same be created by Borrower or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect.

8.9 Due On Sale. Other than (a) a transfer of Personalty in the ordinary course of Borrower's business, or (b) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Borrower shall not sell, convey or otherwise transfer the Mortgaged Property or any part thereof or interest therein, without the prior written consent of Lender. If the Mortgaged Property, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Lender (which consent shall not be unreasonably be withheld, conditioned or delayed), or if Borrower be divested of title to the Mortgaged Property, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full Indebtedness, at the option of Lender and without demand or notice, shall immediately become due and payable Notwithstanding anything to the contrary contained herein or in the Loan Documents, the following shall be permitted without consent of Lender and shall not constitute an event of default or result in any fee: (i) the transfer by the Limited Member of all or any portion of its interest in Borrower to any other entity which is an affiliate of Limited Member or its members or to any other entity which is controlled by or under common control with , the Limited Member; (ii) the removal and replacement of the managing member of the Borrower in accordance with the Operating Agreement, and/or (iii) an amendment of the Operating Agreement memorializing the transfers or removal described above.

8.10 Evidence of Title. Borrower shall deliver to, pay for and maintain with Lender until the indebtedness secured hereby is paid in full, such evidence of title as Lender may reasonably

require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

8.11 Financial Statements. Borrower shall keep adequate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. Borrower shall furnish to Lender copies of its financial statements and other financial information satisfactory to Lender at the time and in the manner provided in the Loan Agreement.

8.12 Inspections. Lender, and its agents, representatives and employees, are authorized, but not obligated, to enter at any reasonable time upon the Mortgaged Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Borrower is authorized to perform under the terms of this Instrument or any other Loan Document.

8.13 No Merger. If the Mortgaged Property is under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Instrument on the Mortgaged Property pursuant to the provisions of this Instrument, any leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

ARTICLE 9 CONDEMNATION AWARDS

If the Mortgaged Property or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Lender shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at Lender's option to commence, appear in, and prosecute in Lender's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Borrower shall promptly give notice to Lender of any condemnation proceeding or any taking for public improvement. All such compensation, awards, damages, causes of action, proceeds, or other payments are hereby assigned to Lender, which may, after deducting therefrom all reasonable actual out of pocket costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, incurred by Lender in connection with such compensation, awards, damages, rights of action, proceeds, or other payments, release any and all moneys so received by Lender or apply the same, or any portion thereof, on any of portion of the Indebtedness (whether or not then due) secured by this Instrument. Any surplus remaining after payment and satisfaction of the Indebtedness shall be paid to Borrower. Condemnation proceeds may be used for the restoration of the Mortgaged Property only if restoration of the Mortgaged Property is economically

practicable (as reasonably determined by Lender) and there are sufficient condemnation proceeds and funds from Borrower (as reasonably determined by Lender) to restore the Mortgaged Property to a condition acceptable to Lender. Otherwise, Lender shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Mortgaged Property regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Mortgaged Property. Provided, notwithstanding the foregoing, Lender shall permit such proceeds to be used for repair or restoration of the Mortgaged Property as long as no Event of Default has occurred and is continuing. Borrower shall execute and deliver to Lender such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Lender may from time to time reasonably require.

ARTICLE 10 ASSIGNMENT OF LEASES, RENTS AND INCOME

10.1 Assignment. Borrower hereby absolutely assigns to Trustee all right, title and interest of Borrower in and to all leases now existing or hereafter entered into by Borrower and demising the whole or any part of the Mortgaged Property, and does hereby further assign any and all rents and sub-rents, any and all other amounts received for the use of all or any portion of the Mortgaged Property, and any and all apartment rental agreements, unit rental agreements and room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such rents, apartment rents, unit rents and/or room rents, covering the Mortgaged Property or any portion thereof, now or hereafter existing or entered into, together with issues, royalties, income, profits and security deposits of and from the Mortgaged Property. Until the occurrence of an Event of Default, which has not heretofore been cured, Borrower may, under a temporary revocable license granted hereby, collect and use all such rents, sub-rents, apartment rents, unit rents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default, which has not heretofore been cured, Borrower's license to collect and use any of such proceeds shall immediately cease without further action by or on behalf of any party, and Lender shall have the right, with or without taking possession of the Mortgaged Property, and either in person, by agent, or through a court-appointed receiver (Borrower hereby consents to the appointment of Lender or Lender's designee as such receiver), to sue for or otherwise collect all such rents, subrents, apartment rents, unit rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, shall be applied toward the payment of the Indebtedness. Such right of collection and use of such proceeds by Lender shall obtain both before and after the exercise of the power of sale provisions of this Instrument, the foreclosure of this Instrument and throughout any period of redemption. The rights granted under this Section shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Mortgaged Property is in danger of being lost, removed, or materially injured, or whether the Mortgaged Property or any other security is adequate to discharge the obligations secured by this Instrument. Lender's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Lender thereafter to collect the same. Neither any provision contained herein, nor the Lender's exercise of Lender's right to collect such proceeds, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, sublease, option, or other interest in the Mortgaged Property, or an assumption of liability under,

or a subordination of the lien or charge of this Instrument to, any tenancy, lease, sublease, option, or other interest in the Mortgaged Property. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Borrower in connection with the Mortgaged Property or any portion thereof are hereby authorized and directed to pay the rents, subrents, apartment rents, unit rents, issues, royalties, income, and profits payable by them with respect to the Mortgaged Property, or any part thereof, directly to Lender on the demand of Lender. Lender's receipt of such rents, subrents, apartment rents, unit rents, room rents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by the Trustee.

10.2 Lender as Creditor of Lessee. Lender, and not Borrower, shall be the creditor of each Lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessee. Lender, however, shall not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Lender shall have the option to apply any monies received by Lender as such creditor towards the reduction of the principal or interest under the Indebtedness as Lender may elect.

10.3 Application of Payments. If at any time during the term of this Instrument Lender receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Instrument and under all other instruments further evidencing or securing the Indebtedness, then Lender shall, except as provided otherwise in the Note and notwithstanding any instructions which may be given by Borrower, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Borrower or to Lender as Lender may in Lender's sole discretion determine.

10.4 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Mortgaged Property or any portion of the Mortgaged Property or the collection of rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Mortgaged Property, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in the Indebtedness secured by this Instrument.

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default.

- (a) The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:
 - (i) failure by Borrower to pay or deposit when due any amount required by this Instrument, the Note, the Loan Agreement, or any other Loan Document, and such default continues for a period of ten (10) Business Days after written notice by Lender to Borrower;

- (ii) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, managing members or managers or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent schedule, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Loan Document;
 - (iii) any material default occurs under any Senior Loan Document, including the failure, for any reason, of the disbursement of any Senior Loan proceeds, or any event occurs or condition exists, which with the passage of time, the giving of notice, or both, would constitute a default under the Senior Loan Documents;
 - (iv) Borrower becomes dissolved or terminated;
 - (v) receiver, trustee, or custodian is appointed for any part of Borrower's property, or any part of Borrower's property is assigned for the benefit of creditors;
 - (vi) at any time this Instrument or any other applicable Loan Document creating a lien on any of the Collateral may be impaired by any lien, encumbrance or other defect other than the matters identified Title Exceptions and such condition continues for a period of thirty (30) calendar days following written notice thereof from Lender;
 - (vii) any breach of or default under the Operating Agreement which materially and adversely affects Lender; and
 - (viii) a petition in bankruptcy is filed against Borrower, and such petition is not dismissed within ninety (90) calendar days of filing, a petition in bankruptcy is filed by Borrower or a receiver or trustee of the property of Borrower is appointed; or if Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Code or any law, State or Federal, or makes an assignment for the benefit of creditors or is adjudged insolvent by any State or Federal Court of competent jurisdiction.
- (b) Any failure by Borrower to perform any of its obligations under this Instrument, as and when required, which continues for a period of thirty (30) calendar days after Notice of such failure by Lender to Borrower. However, if Borrower's failure to perform its obligations as described in this Section is of the nature that it cannot be cured within the thirty (30) day grace period but reasonably could be cured within ninety (90) calendar days, then Borrower shall have additional time as determined by Lender in its discretion, not to exceed an additional sixty (60) calendar days, in which to cure such default, provided that Borrower has diligently commenced to cure such default during the 30-day grace period and diligently pursues the cure of such default. However, no such Notice or grace

periods shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document.

- (c) Any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document. If no cure period is specified, Borrower shall have ten (10) Business Day to cure a monetary default and thirty (30) calendar days to cure a non-monetary default.

11.2 Remedies. Upon the occurrence of any Event of Default, which has not heretofore been cured, under this Instrument, at Lender's option and in addition to any other remedy Lender may have under the Note, Lender may declare all sums secured hereby immediately due and payable. Thereafter, Lender may at its option:

- (a) Pursuant to applicable law, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Borrower, shall sell the Mortgaged Property on the date and at the time and place designated in the notice of sale, and
- (b) Borrower shall surrender possession of the Mortgaged Property to the purchaser immediately after the sale of the Mortgaged Property as provided herein, in the event such possession has not previously been surrendered by Borrower.
- (c) Notwithstanding anything to the contrary contained herein or in any Loan Document, for a period commencing on the date hereof and continuing until the later of (i) the expiration of the fifteen (15)-year tax credit compliance period as defined in Section 42 of the Internal Revenue Code of 1986, as amended, and (ii) such time as an affiliate of Bonneville Mortgage Company, a Utah corporation is no longer a member of Borrower, Lender shall have no right to declare a default, accelerate the indebtedness or pursuant any other right or remedy under this Instrument.

11.3 UCC Remedies. Notwithstanding anything to the contrary herein, Lender, with regard to all Personalty, including fixtures, chattels, equipment, inventory, and personal property, conveyed to Trustee under Section 2.2 of this Instrument, shall have the right to exercise, from time to time, any and all rights and remedies available to Lender, as a secured party under the Uniform Commercial Code, and any and all rights and remedies available to Lender under any other applicable law. Upon written demand from Lender, Borrower shall, at Borrower's expense, assemble such fixtures, chattels, equipment, inventory, and personal property and make them available to Lender at a reasonably convenient place designated by Lender and Lender's expense in retaking, holding, preparing for sale, selling or the like shall be borne by Borrower, such expenses to include Lender's and Trustee's attorneys' fees incurred in connection therewith. Lender shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of the Personalty and records

relating to the Personalty. Lender may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out-of-pocket expenses incurred by Lender, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Personalty, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Personalty, and (g) costs for preservation and protection of the Personalty, apply the remainder to pay, or to hold as a reserve against, the Obligations.

11.4 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Lender shall have the option to foreclose this Instrument in the manner provided by law for the foreclosure of mortgages on real property and Lender shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

11.5 Receiver. If an Event of Default occurs, Lender, as a matter of right and without regard to the interest of Borrower therein, shall have the right upon notice to Borrower to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property and Borrower hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Mortgaged Property or the foreclosure proceeding, unless the receivership is sooner terminated.

11.6 No Remedy Exclusive. No remedy conferred upon or reserved to Lender under this Instrument shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Instrument or any other Loan Document, or now or hereafter existing at law or in equity or by statute.

11.7 Rights upon Default. In making the Loan, Lender has relied upon the rights available to Lender under this Instrument upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Instrument, to sell the Mortgaged Property encumbered by this Instrument pursuant to the power of sale granted hereunder, the right to foreclose this Instrument as a mortgage, and the right to have a receiver appointed.

11.8 Standstill. Notwithstanding anything contained herein to the contrary, for a period of fifteen (15) years from the date hereof, Lender shall not (i) commence foreclosure proceedings with respect to the Mortgaged Property under this Instrument or exercise any other rights or remedies it may have under the said Note or this Instrument, including, but not limited to, accelerating sums due under the said Note, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies hereunder and (ii) join with any other creditor in commencing any bankruptcy reorganization arrangement, insolvency or liquidation proceedings with respect to the Borrower.

11.9 Incorporation of Certain Nevada Covenants. The following Covenants, Nos. 1, 3, 4 (rate of interest is the default rate stated in the Secured Note), 5, 6, 7 (reasonable attorneys' fees in the amount provided for in the Secured Note), 8 and 9 of NRS 107.030 are hereby adopted and

made a part of this Deed of Trust, provided, however, that the express covenants of this Deed of Trust shall control to the extent that the same are inconsistent with Covenant Nos. 1, 3, 4, 5 and 9 and, provided further, that Covenant Nos. 6, 7 and 8 shall control over the express covenants of this Deed of Trust to the extent the same are inconsistent with Covenant Nos. 6, 7 and 8.

ARTICLE 12 GENERAL PROVISIONS

12.1 Notices. All notices, demands and other communications under or concerning this Instrument or the other Loan Documents shall be in writing and delivered in accordance with the Note.

12.2 Severability. If any provision of this Instrument shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Instrument or render the same invalid, inoperative, or unenforceable to any extent whatever.

12.3 Amendments, Changes, and Modifications. This Instrument may not be amended, changed, modified, altered, or terminated without a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

12.4 Governing Law. This Instrument shall be governed exclusively by and construed in accordance with the applicable laws of the State of Nevada.

12.5 Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Instrument are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

12.6 Binding Effect. This Instrument shall be binding upon Borrower and Borrower's successors and assigns. This Instrument shall inure to the benefit of Lender, and Lender's successors and assigns.

12.7 Waivers. No delay or failure to exercise any right or power accruing upon any Event of Default, including Lender requiring strict performance by Borrower of any undertakings, agreements, or covenants contained in this Instrument, shall impair any such right or power or shall be construed to be a waiver thereof, including the right to demand strict compliance and performance, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any waiver by Lender of any Event of Default under this Instrument shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Borrower under this Instrument, shall be deemed to have been waived by Lender, unless such waiver is evidenced by an instrument in writing signed by an officer of Lender and directed to Borrower specifying such waiver.

12.8 Successor Trustee. Lender may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county wherein the Mortgaged Property is located, a substitution of trustee. From the time the substitution is filed for record, the new

Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

12.9 Acceptance of Trust. Trustee accepts this Trust when this Instrument, duly executed and acknowledged, is made a public record as provided by law.

12.10 Attorneys' Fees and Expenses.

- (a) Borrower agrees to reimburse Lender for any reasonable attorneys' fees and out of pocket costs actually incurred by Lender with respect to any bankruptcy or insolvency proceeding, or other action involving Borrower or any guarantor as a debtor. Borrower additionally agrees to pay all reasonable costs and out-of-pocket expenses, including, without limitation, (i) reasonable attorneys' fees and legal expenses; (ii) transportation and storage costs; (iii) advertising of sale of the Mortgaged Property; (iv) sale commissions; (v) sales tax; (vi) costs for improving or repairing the Mortgaged Property; and (vii) costs for preservation and protection of the Mortgaged Property, incurred by Lender in obtaining possession of Mortgaged Property, storage and preparation for sale, sale or other disposition, and otherwise incurred in foreclosing upon the Mortgaged Property. Any and all such costs and out-of-pocket expenses shall be payable by Borrower upon demand, together with interest thereon from the date of the advance until repaid, both before and after judgment, at the rate provided in the Note.
- (b) Regardless of any breach or default, Borrower agrees to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Borrower, the Mortgaged Property, or this Instrument, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

12.11 Request for Notice. Borrower requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Borrower at the address for Borrower specified in Section 12.1 of this Instrument as required by applicable law.

12.12 Limitation on Damages. Lender and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Borrower for consequential, special, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Instrument or the Mortgaged Property regardless of whether Lender may have been advised of the possibility of such damages.

12.13 Preferential Transfers. If the incurring of any debt by Borrower or the payment of any money or transfer of property to Lender by or on behalf of Borrower should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "voidable transfers"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Lender is required to repay or restore any voidable

transfers or the amount or any portion thereof, or upon the advice of Lender's counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys' fees of Lender related thereto, the liability of Borrower and this Instrument, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

12.14 Survival. All agreements, representations, warranties and covenants made by Borrower shall survive the execution and delivery of this Instrument, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Lender contemplated by this Instrument is outstanding and unpaid, notwithstanding any termination of this Instrument. All agreements, representations, warranties and covenants in this Instrument shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

12.15 Non-Recourse. All agreements, representations, warranties and covenants made by Borrower shall survive the execution and delivery of this Instrument, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Lender contemplated by this Instrument is outstanding and unpaid, notwithstanding any termination of this Instrument. All agreements, representations, warranties and covenants in this Instrument shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

12.16 Limited Member Notice and Cure. Notwithstanding anything to the contrary contained herein, Lender hereby agrees that any cure of any default made or tendered by Limited Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to the Limited Member.

[Remainder of Page Blank; Signature Page Immediately Following]

IN WITNESS WHEREOF, Grantor has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

GRANTOR:

**minnie st. 2020 LLC,
a Nevada limited liability company**

By: Minnie St. 2020 Managing Member, LLC
Its: Managing Member

By: American Covenant Senior Housing
Foundation, Inc.
Its: Manager

By: 
Gerald M. Fritts, Executive Director

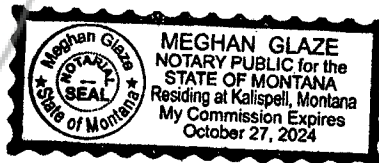
STATE OF Montana)
COUNTY OF Flathead)

On this 9th day of March, 2022, before me Gerald M. Fritts, Executive Director of America Covenant Senior Housing Foundation, Inc., manager of Minnie St. 2020 Managing Member, LLC, a Nevada limited liability company, the managing member of minnie st. 2020, LLC, a Nevada limited liability company, personally appeared before me a Notary Public in and for said County and State, and are known to me to be the people described in and who executed the within and foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said Flathead County, the day and year first above written.

Notary Public Meghan Glaze My commission expires Oct 27, 2024

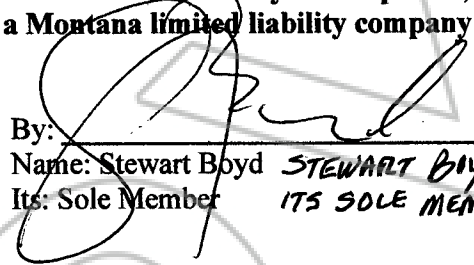
[NOTARIAL SEAL]



IN WITNESS WHEREOF, Beneficiary has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

BENEFICIARY:

**Oak Leaf Community Development, LLC,
a Montana limited liability company**

By: 
Name: Stewart Boyd **STEWART BOYD**
Its: Sole Member **ITS SOLE MEMBER**

STATE OF _____)
 :
COUNTY OF _____)

On this ___ day of _____, 2022, before me Stewart Boyd, Sole Member of Oak Leaf Community Development, LLC, a Montana limited liability company, personally appeared before me a Notary Public in and for said County and State, and are known to me to be the people described in and who executed the within and foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said _____ County, the day and year first above written.

Notary Public _____ My commission expires _____

[NOTARIAL SEAL]

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Napa }

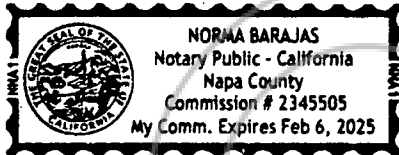
On March 9, 2022 before me, Norma Barajas
Date Here Insert Name and Title of the Officer

personally appeared Stewart P. Boyd
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature [Handwritten Signature]
Signature of Notary Public
NORMA BARAJAS, NOTARY

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Multifamily Deed of Trust, Assignment of Rents, Security Agreement And Fixture
Document Date: 03/09/22 Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

Signer's Name: _____
 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Lincoln County, State of Nevada, and more particularly described as follows:

(APN #003-053-03)

LOTS TWO (2) AND THREE (3) IN BLOCK FORTY-SIX (46) OF THE NORTH SIDE ADDITION TOWN OF CALIENTE AS SHOWN BY MAP THEREOF RECORDED OCTOBER 08, 1940, AS FILE NO. 15661 IN THE OFFICE OF THE COUNTY RECORDER OF LINCOLN COUNTY, NEVADA.