

180701-mcp

WHEN RECORDED, MAIL TO:

Actium Loan Management LLC
Actium High Yield Loan Fund VII LLC
Actium High Yield Loan Fund VIII LLC
Actium High Yield Loan Fund IX LLC
111 East Broadway, Suite 390
Salt Lake City, Utah 84111
08-35-456-022
08-35-456-023

14264560 B: 11504 P: 7853 Total Pages: 10
07/15/2024 04:32 PM By: zjorgensen Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120 SALT LAKE CITY, UT 84121

**DEED OF TRUST
AND ASSIGNMENT OF LEASES AND RENTS**

THIS DEED OF TRUST AND ASSIGNMENT OF LEASES AND RENTS (this “Trust Deed”), is made and entered into as of July 15, 2024, by Lofts Apartments, LLC, a Utah limited liability company (collectively, “Trustor”) in favor of Cottonwood Title (“Trustee”), and Actium Loan Management LLC, a Utah limited liability company, Actium High Yield Loan Fund VII LLC, a Utah limited liability company, Actium High Yield Loan Fund VIII LLC, a Utah limited liability company and Actium High Yield Loan Fund IX LLC, a Utah limited liability company and their successors and assigns (collectively, “Beneficiary”), with a mailing address at 111 East Broadway, Suite 390, Salt Lake City, Utah 84111, and its successors and assigns.

WITNESSETH:

A. Trustor hereby conveys, warrants, and transfers to Trustee, in trust, with power of sale, the Trustor's present and future estate, right, title and interest in the real property described on Exhibit “A” attached hereto, including any and all water rights associated therewith or appurtenant thereto and by this reference incorporated herein (the “Property”). The Property shall be deemed to be the security hereby given for the payment of the indebtedness and the performance of the obligations evidenced and secured hereby.

B. This Trust Deed is given for the purpose of securing the following obligations of Trustor (the “Obligations”):

(1) the payment and performance of each and every obligation of Trustor, evidenced by that certain promissory note (the “Note”) of equal date herewith, in the original principal sum of \$1,140,000, together with interest thereon, made by Trustor and those other parties thereto, and payable to the order of Beneficiary at the times and in the manner set forth in the Note;

(2) any extensions, renewals, or modifications of the Note or of the obligations evidenced thereby, regardless of the extent of or the subject matter of any such extension, renewal, or modification;

(3) any and all rents, revenues, issues, profits, royalties, income, cash proceeds, security deposits, accounts, moneys, and other benefits that are now due or may hereafter

become due by reason of the renting, leasing, bailment of all or any portion of the Property, or the use or occupancy thereof (collectively "Rents");

(4) all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect and every modification, amendment, or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions, and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Property, together with all related security and other deposits (in each case, as amended, amended and restated, supplemented, renewed, extended, substituted, or otherwise modified from time to time, collectively, "Leases");

(5) All insurance or other settlement proceeds relating to or arising out of the foregoing, all proceeds of a sale of all or any portion of the foregoing, and all causes of action, claims, compensation, awards, damages, proceeds, payments, relief, or recoveries, including interest thereon, as a result of any casualty or condemnation of all or any part of the Property or for any damage or injury to it or for any loss or diminution in value of the Property (collectively, the "Proceeds"); and

(6) the payment and performance of each and every agreement and obligation of Trustor under this Trust Deed.

C. In connection with this Trust Deed, the parties agree as follows:

(1) Trustor hereby represents and warrants that: (a) Trustor has the authority and right to execute and deliver this Trust Deed; (b) Trustor shall defend the title to the Property against all claims and demands whatsoever; (c) the Property is free and clear of any and all liens and encumbrances; (d) any and all obligations Trustor may have incurred in connection with the Property are current and without default; and (e) Trustor hereby releases, waives, and relinquishes all exemptions and homestead rights which may exist with respect to the Property.

(2) Trustor shall promptly pay or cause to be paid to Beneficiary, or order, and shall promptly perform or cause to be performed, each and every payment and obligation on the part of Trustor provided to be paid or performed in connection with any of the Obligations. All of such payments and obligations are mandatory, and Trustor's failure to accomplish any of the same shall constitute a default under this Trust Deed.

(3) Trustor further agrees: (a) to maintain the Property at all times in good condition and repair, and in compliance with any and all applicable laws, rules, codes, and regulations; (b) not to commit any waste thereon; (c) to comply at all times with all laws, ordinances, regulations, covenants, codes, and restrictions in any manner affecting the Property; and (d) not to commit or permit any act upon the Property in violation of law.

(4) Unless and to the extent otherwise agreed, in writing, by Trustor and Beneficiary, Trustor shall secure and at all times maintain a reasonable insurance policy or policies for the Property providing for coverage in an amount equal to the full insurable value of the Property.

(5) Trustor shall appear in and defend any action or proceeding purporting to or which might in any way affect the title to the Property or the security hereof which arises from an act or event caused by Trustor after the date of this Deed of Trust.

(6) In order to secure the due and punctual payment and performance of all of the Obligations as and when the same becomes due and payable, whether at the stated maturity, by acceleration, or otherwise, Trustor hereby absolutely, presently, irrevocably, and unconditionally grants, assigns, and transfers to Beneficiary all of Trustor's present and future right, title, interest, and estate in, to, and under all current and future Leases and Rents, and the absolute, present, irrevocable, and unconditional right to receive, collect, and possess all Rents. Trustor hereby further grants to Beneficiary the right to: (i) enter and take possession of the Property for the purposes of collecting the Rents; (ii) dispossess by the usual summary proceedings of any tenant defaulting in the payment thereof to Beneficiary; (iii) let the Property or any part thereof; and (iv) apply the Rents, after payment of all necessary charges and expenses (including attorneys' fees and costs) to the Obligations.

(7) Trustor hereby irrevocably appoints Beneficiary its true and lawful attorney-in-fact to: (i) enforce in Trustor's name or Beneficiary's name or otherwise all rights of Trustor in the instruments, including without limitation, checks and money orders, tendered as payments of Rents; (ii) demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Trustor's or Beneficiary's name, for all Rents; and (iii) do any and all things necessary and proper to carry out the purposes of this provision. The execution of this Deed of Trust constitutes Trustor's irrevocable consent to Beneficiary's entry and taking possession of the Property pursuant hereto, whether or not sale or foreclosure has been instituted. Neither the exercise of any rights hereunder by Beneficiary nor the application of the Rents to the Obligations shall cure or waive any default or notice of default, and shall be cumulative with all other rights and remedies of Beneficiary. Such grant, assignment, and transfer shall not be construed to: (i) bind Beneficiary to the performance of any of the covenants, conditions, or provisions contained in any Lease or otherwise impose any obligation upon Beneficiary; or (ii) create, or operate to place or impose, any responsibility, obligation, or liability upon Beneficiary for: (A) the control, care, maintenance, management, or repair of the Property; (B) any dangerous or defective condition of the Property, including, without limitation, the presence of any environmental contamination or conditions; (C) any waste committed on the Property by any Person; and/or (D) any negligence in the management, upkeep, repair, or control of the Property.

(8) Any entering upon and taking and maintaining of control of the Property or the Rents by Beneficiary or the receiver and any application of Rents as provided herein shall not: (i) constitute Lender as a "mortgagee in possession" unless affirmatively elected by Lender in writing; (ii) make Beneficiary an agent of Trustor; (iii) constitute an action, render the Obligations unenforceable, or otherwise limit any rights available to Beneficiary with respect to its security; or (iv) be deemed to create any bar to a deficiency judgment on the Obligations. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary hereunder, except as may be due to gross negligence or intentional acts of Beneficiary, its employees or agents.

(9) Notwithstanding the grant, assignment, and transfer of Leases and Rents from Trustor to Beneficiary pursuant hereto, so long as no default shall occur and be continuing, Beneficiary grants to Trustor a revocable license to collect and receive Rents as they become due, and to retain, use, and apply Rents to the payment of the Obligations and to the costs and expenses incurred in connection with the operation and maintenance of the Property, and to exercise all rights as landlord under any Lease, in each case subject to the terms of this Deed of Trust and the other Loan Documents.

(10) From and after the occurrence and during the continuance of any default: (a) the revocable license granted to Trustor shall immediately and automatically, with or without notice from Beneficiary, cease and terminate and shall be void and of no further force or effect; (b) Beneficiary shall immediately and automatically be entitled to receive, collect, and possess all Rents; (c) Beneficiary may, at its sole option, notify in writing all tenants under Leases that all Rents due thereunder from and after the date of such notice shall be paid to Beneficiary at its address set forth in this Deed of Trust, or at such other place as Beneficiary shall notify Trustor or the tenants in writing; and (d) any portion of Rents then or thereafter received or held by Trustor shall be payable immediately upon written demand to Beneficiary for application by Beneficiary, at its option, to the payment of the Obligations and/or expenses in connection with the operation and maintenance of the Property.

(11) Notwithstanding the license granted to Trustor, Trustor agrees that, at Beneficiary's sole option from time to time, Beneficiary, and not Trustor, shall be deemed to be the creditor of each tenant under each Lease in respect of any and all assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting each tenant, with an option to apply in accordance with the Loan Documents any money received from such tenant in reduction of any amounts due under the Loan Documents. In each such case, Beneficiary shall be obligated to file or make timely filings of claims in such proceedings and to otherwise pursue creditor's rights in such proceedings.

(12) Unless and to the extent otherwise agreed, in writing, by Trustor and Beneficiary, Trustor shall pay, at least ten (10) days before delinquent, all taxes, assessments, and governmental, municipal, or other charges or impositions levied against or affecting the Property which are attributable to Trustor during Trustor's ownership of the Property, and shall promptly deliver all receipts for such payments to Beneficiary upon request.

(13) Unless and to the extent otherwise agreed, in writing, by Trustor and Beneficiary, Trustor agrees to pay when due all real and personal property taxes, all general and special assessments, all water charges, utility payments, common maintenance assessments, mechanics, laborers and materialmen's claims, all other Federal and State taxes, all of the foregoing without regard to whether they apply only to the Property or to whether such lien is senior or junior to this Trust Deed which arise during and are attributable to Trustor's ownership of the Property.

(14) Should Trustor fail to make any payment, to do any act or thing, or to perform any obligation herein provided to be paid, done or performed, at the time and in the manner herein provided, Beneficiary may, but without any obligation to do so, and with five (5)

days prior notice to Trustor but without releasing Trustor from any obligation hereunder: (a) make, do, pay, or perform the same in such manner and to such extent as Beneficiary may deem reasonably necessary or desirable to protect the security hereof or to protect any other legitimate interest of Beneficiary or Trustee.

(15) Trustor shall repay to Beneficiary all sums, with interest thereon as hereafter provided, which at any time may be paid or advanced by Beneficiary for the payment of insurance, taxes, assessments, governmental, municipal, or other charges or impositions, title searches, title reports or abstracts, any obligation secured by a prior lien upon or prior interest in the Property and any other advances made by Beneficiary which are the responsibility of Trustor, to maintain this Trust Deed as a valid and subsisting lien upon the Property and to preserve and protect Beneficiary's, Trustee's, or Trustor's interest therein or hereunder. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Trust Deed. The amount of each such advance shall, for the period during which it remains unpaid and both before and after judgment, bear interest at the rate of 24.00% per annum.

(16) Trustor shall be deemed to be in default hereunder in the event: (a) Trustor shall fail to pay, perform or discharge or to cause to be paid, performed, or discharged, at the time and in the manner agreed upon herein, any of the terms and conditions of this Trust Deed or the Note, any note, indebtedness, liability, contract or obligation secured by or referred to in this Trust Deed; (b) if Trustor has made any material misrepresentation, or has failed to disclose any material fact, in any written representations and disclosures made by Trustor in order to induce Beneficiary to extend credit as evidenced by the Note or notes and other agreements which this Trust Deed secures; (c) if Trustor abandons the Property or leaves the same unattended or unprotected; or (d) if Trustor shall become insolvent, make an assignment for the benefit of creditors, be the subject of any bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation or dissolution proceedings.

With respect to a default hereunder, Beneficiary shall, before exercising Beneficiary's right of acceleration available hereunder, give Trustor written notice of such default and allow Trustor a period of ten (10) days after the mailing or personal delivery of such notice to cure such default. Upon the failure of Trustor to timely cure such a default, or upon the occurrence of any other default hereunder, all of the Obligations shall, at the option of Beneficiary and without notice or demand, immediately become due and payable and Beneficiary may either:

(a) declare the entire indebtedness of Trustor to Beneficiary to be immediately due and payable, and charge interest at the rate of 24.00% per annum, in lieu of the 10% per annum rate applicable under the Note, from the date of default until said indebtedness is paid;

(b) to the extent permitted by law, bring an action to collect any installment which is due or past due and payable without affecting or losing the security of this Trust Deed or waiving any other right or remedy allowed by law;

(c) foreclose this Trust Deed in the manner provided by law for the foreclosures of mortgages on real property, bring an action for damages, or exercise such other

remedies or combinations of remedies as Beneficiary or Trustee may have under law and equity; and

- (d) exercise the Power of Sale described below.

No power or remedy herein provided shall be exclusive of any other power or remedy which now exists or which may hereafter exist by law.

(17) All procedural matters relating to exercise of the Power of Sale available under this Trust Deed (such as, but not limited to, the manner of giving notice of sale, the contents of such notice, the persons to receive notice, the time which must elapse between various stages of the proceeding, the method for establishing that proper notice has been given, and the manner in which the sale is conducted) shall be governed by the statutory law which is in effect at the time said power is exercised. In the event some or all of such procedural matters are not covered by then-effective legislation, the matters not covered shall be governed by the law, which is in effect at the time this Trust Deed is executed.

(18) Upon the exercise of the power of sale pursuant hereto and pursuant to applicable law (the "Power of Sale"), following failure of Trustor to timely cure a default hereunder, the Property may be sold in its entirety or in separate parts in such order as Trustee may determine. Any person, including Trustor and Beneficiary, may bid and purchase at the sale. Upon receipt of payment, Trustee shall execute and deliver a Trustee's Deed to the purchaser. The Trustee's Deed may contain recitals of compliance with any requirements of applicable law relating to exercise of the Power of Sale or to the sale. Such recitals shall constitute conclusive evidence of such compliance in favor of bona fide purchasers and encumbrances for value and prima facie evidence thereof in favor of all other persons. The Trustee's Deed shall operate to convey to the grantee, not subject to any right of redemption, the Trustee's title and all right, title, interest, claim of Trustor, of Trustor's successors in interest, and of all persons claiming by, through, or under them, in and to that part of the Property sold, including any and all rights, title interest, or claim in and to such part which may have been acquired by Trustor or Trustor's successors in interest subsequent to the execution of this Trust Deed. Trustee shall apply the proceeds of sale toward payment of the following, and in the order indicated:

- (a) all costs and expenses (regardless of the particular nature thereof) incurred in connection with exercise of the Power of Sale or with the sale, including Trustee's and attorney's fees and the cost of any evidence of title procured in connection with the sale;

- (b) each sum the payment of which is secured by this Trust Deed, together with accrued interest thereon at the applicable rate; and

- (c) the balance, if any, to those entitled thereto or, at Trustee's discretion, such remainder may be deposited with the Clerk of the County in which the sale took place.

Trustor hereby authorizes Trustee, upon Trustee's being presented with an affidavit signed by Beneficiary setting forth facts showing a default under this Trust Deed, to accept as true and conclusive all facts and statements contained therein and to rely and act thereon.

(19) In the event Trustor sells, conveys, transfers or disposes of the Property or any part thereof, either voluntarily or involuntarily, or agrees to do so, without the prior written consent of Beneficiary, then Beneficiary shall have the right at Beneficiary's option to declare all amounts secured hereby immediately due and payable.

(20) In any judicial proceeding brought to foreclose this Trust Deed as a mortgage, Beneficiary shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of Beneficiary's rights hereunder, including court costs and reasonable attorneys' fees. If a deficiency remains after proper application of the proceeds from the sale had pursuant to judicial decree, Trustor shall pay the same immediately after determination of the amount thereof. Such deficiency shall, both before and after judgment therefor is entered, bear interest at the 24% per annum default rate applicable under the Note.

(21) Notwithstanding any acceleration of the maturity of sums secured hereby which may occur pursuant to the terms of this Trust Deed, Trustor, any of Trustor's successors in interest, any person having of record a subordinate lien or encumbrance affecting any part of the Property, or any Beneficiary having of record a subordinate trust deed affecting any part of the Property may, if Beneficiary and Trustee have theretofore taken steps in preparation of exercise of the Power of Sale available hereunder, and at any time prior to the expiration of three months from the publication of notice of default as provided by law, reinstate this Trust Deed by: (a) paying to Beneficiary the entire amount which would then be due in connection with the Obligations had no acceleration occurred; (b) paying to Beneficiary all costs and expenses (regardless of the particular nature thereof) actually incurred in enforcing the terms of this Trust Deed or the Obligations, including Trustee's and attorneys' fees computed as hereinafter provided; and (c) curing in all respects each breach, if any, of Trustor's covenants and agreements contained herein or associated with any of the Obligations which relate to a subject other than the payment of money.

Upon timely fulfillment of the proceeding three conditions all proceedings theretofore had or instituted in preparation of exercise of the Power of Sale available hereunder shall be canceled and this Trust Deed and the Obligations shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred.

(22) Trustee shall pay all filing costs associated with this Trust Deed.

(23) Trustor hereby requests that a copy of any notice of sale hereunder be mailed to each of Trustor at the address for Trustor set forth at the outset of this instrument. Such Notice shall be deemed to have been given for all purposes hereunder, when deposited in the United States Mail with postage prepaid.

(24) Beneficiary may, through Beneficiary's delivery to Trustee of written request therefor, require Trustee to reconvey, release, and discharge from the operation of this Trust Deed all or any part of the Property. Such written request shall contain a description of that portion of the Property to be reconveyed, a statement of the consideration, if any, received by Beneficiary for such reconveyance, a declaration that Beneficiary is the owner and holder of

the Obligations, and a statement that the Obligations have not been assigned or transferred. Any reconveyance executed by Trustee shall identify this Trust Deed and shall describe that portion of the Property being released from the lien hereof. The grantee in any such reconveyance may be described as "the person or persons entitled thereto." Any partial reconveyance shall not diminish Trustor's liability for the Obligations and shall not affect or impair the lien of this Trust Deed with respect to the remaining portion of the Property. This Trust Deed need not accompany a request for partial reconveyance but, upon Trustee's demand, Beneficiary shall exhibit the Note to the Trustee.

(25) At any time during the term of this Trust Deed, Beneficiary may appoint a successor Trustee to act hereunder. All matters relating to the method of effecting a substitution of Trustees (including the information required to be contained in the instrument accomplishing substitution and necessary signatories to such instrument) shall be governed by the statutory law, which is in effect at the time substitution takes place. In the event then-effective legislation does not cover some or all of the matters relating to the method of accomplishing a substitution of Trustees, the matters not covered shall be governed by the law that is in effect at the time this Trust Deed is executed. From the time a substitution of Trustees is accomplished the new Trustee shall succeed to all the power, duties, authority, and title of the Trustee named herein and of any successor Trustee.

(26) This instrument constitutes a Security Agreement as that term is used in the Utah Uniform Commercial Code (the "Code") and Trustor hereby grants to Beneficiary a security interest in all of the Property, which consists of fixtures subject to the Code, as security for the obligations hereunder. Pursuant to Section 70A-9-402(7), Utah Code Annotated (1953), as amended, this instrument shall be effective as a financing statement filed as a fixture filing from the date of its recording. Trustor grants beneficiary the right to take any steps necessary to perfect such security interest, including the filing of any documents with proper government authorities.

(27) In addition to the foregoing, the parties agree that: (a) this Trust Deed shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns; (b) in the event that any provision of this Trust Deed shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Trust Deed; (c) this Trust Deed shall be governed by, and construed in accordance with, the laws of the State of Utah; and (d) Beneficiary shall not be required to release this Trust Deed until it has proof that the payments to pay off the obligations secured by this Trust Deed will not result in any preference, similar action or other litigation and may require an opinion of counsel to confirm this or a release.

(28) By executing this Trust Deed, except as otherwise required by law, the parties agree to submit to the exclusive jurisdiction of, and agree to the venue of, the state or federal courts of the State of Utah located in Salt Lake City, Utah. The parties hereto agree not to bring an action in any court of law located outside of Salt Lake City, Utah.

DATED as of the day and year first above written.

Lofts Apartments LLC, a Utah limited liability
company

By:

Its:

DONOVAN GILLILAND

Manager

STATE OF UTAH

)

: ss.

COUNTY OF SALT LAKE

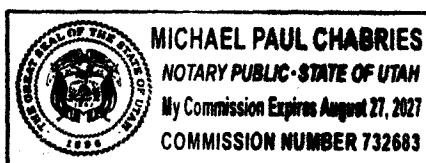
)

The foregoing instrument was acknowledged before me this
JULY 12th, 2024, by DONOVAN GILLILAND, who acknowledged before
me that he/she was the MANAGER of Lofts Apartments, LLC.

Michael P. Chabries

NOTARY PUBLIC

My Commission Expires: 8-27-2027



**EXHIBIT A
PROPERTY DESCRIPTION**

PARCEL 1:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 57, PLAT "C", SALT LAKE CITY SURVEY, AND RUNNING THENCE WEST 12 RODS; THENCE SOUTH 41 1/4 FEET; THENCE EAST 12 RODS; THENCE NORTH 41 1/4 FEET TO THE PLACE OF BEGINNING.

PARCEL 2:

A TRACT OF LAND SITUATE IN LOTS 1 AND 2, BLOCK 57, OF PLAT "C", SALT LAKE CITY SURVEY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING 2 1/2 RODS SOUTH OF THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTH 2 1/2 RODS; THENCE WEST 12 RODS; THENCE NORTH 2 1/2 RODS; THENCE EAST 12 RODS TO THE PLACE OF BEGINNING.

Tax Id No.: 08-35-456-022 and 08-35-456-023