



W3257427

RECORDING REQUESTED BY

Protective Life Insurance Company

**AND WHEN RECORDED, MAIL DOCUMENT
TO:**

Protective Life Insurance Company
2801 Highway 280 South
Birmingham, Alabama 35223
Attn: Investment Department

E# 3257427 PG 1 OF 44
Leann H. Kilts, WEBER COUNTY RECORDER
29-Sep-22 1225 PM FEE \$40.00 DEP SLV
REC FOR: OLD REPUBLIC TITLE (SOUTH OGDEN)
ELECTRONICALLY RECORDED

2268952 mLh

Space Above This Line for Recorder's Use Only

Tax Parcel: 06-019-0028

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

ATTENTION COUNTY RECORDER: THIS INSTRUMENT IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTIONS 70A-9A-502 OF THE UTAH COMMERCIAL CODE. PORTIONS OF THE GOODS COMPRISING PART OF THE ENCUMBERED PROPERTY ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS INSTRUMENT IS TO BE FILED OF RECORD IN THE RECORDS OF THE COUNTY WHERE DEEDS OF TRUST ON REAL PROPERTY ARE RECORDED AND SHOULD BE INDEXED BOTH AS A DEED OF TRUST AND AS A FINANCING STATEMENT COVERING FIXTURES. THE ADDRESSES OF BORROWER (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SPECIFIED BELOW.

Cover Sheet

Date: September 29, 2022.

Borrower: FERNWOOD HILLTOP APARTMENTS, L.C., a Utah limited liability company

Borrower's Notice Address: 1785 E 1450 S Ste 120
Clearfield, UT 84015

Trustee: Old Republic National Title Insurance Company and all other successors and assigns for the benefit of Beneficiary (as defined below).

Trustee's Notice Address: 5732 South 1475 East #100
South Ogden, UT 84403

Beneficiary: PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders (Beneficiary) from time to time of the Note (as defined herein).

Beneficiary's Notice Address: 2801 Highway 280 South
Birmingham, Alabama 35223
Attention: Investment Department

Note Amount: \$27,000,000.00

Maturity Date: October 1, 2032

State: Utah

Record Owner of Land Fernwood Hilltop Apartments, L.C.,
a Utah limited liability company

Exhibit A: Attached hereto and incorporated herein by reference.

1. **DEFINITION OF TERMS.** As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the meanings set forth below. Any other term or phrase not defined in this Paragraph 1, but shown in quotes within parentheses in another provision of this Indenture, shall have the meaning set forth in such provision.

1.1 **After-Maturity Rate:** The default interest rate as defined and set forth in the Note.

1.2 **Commitment:** The loan commitment to Beneficiary for the loan secured hereby.

1.3 **Borrower's Notice Address:** as defined on Cover Sheet.

1.4 **Casualty:** as defined in Paragraph 5.1.

1.5 **Contested Sum:** as defined in clause (e) of Paragraph 4.1.

1.6 **Environmental Law:** Any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; and the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time.

1.7 **Events of Default:** as defined in Paragraph 8.1.

1.8 **Fixtures:** All fixtures located on the Improvements or now or later installed in, or used in connection with, any of the Improvements, including, but not limited to, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire-extinguishing equipment, water tanks, heating, ventilating, air-conditioning equipment, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Land or the Improvements.

1.9 **Hazardous Substance:** (i) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance, or any other waste, material, or pollutant that: poses a hazard to the Property or to persons on the Property, or causes the Property to be in violation of any Environmental Law; (ii) asbestos in any form; (iii) urea formaldehyde foam insulation; (iv) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls; (v) radon gas; (vi) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Environmental Law, as such may be amended from time to time; (vii) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any

governmental authority or which may pose a hazard to the health and safety of the occupants of the Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; (viii) any other chemical, material, or substance that may pose a hazard to the environment; and (ix) mold (defined as the presence of any form of (a) multicellular fungi that live on plant or animal matter and an indoor environment (including without limitation Cladosporium, Penicillium, Alternaria, Aspergillus, Fusarium, Trichoderma, Memnoniella, Mucor, and Stachybotrys chartarum (SC) often found in water damaged building materials), (b) spores, scents or byproducts produced or released by fungi, including mycotoxins and (c) microbial matter which reproduces through mold, mildew and viruses, whether or not such microbial matter is living).

1.10 Hazardous Substance Claim: Any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders threatened, instituted, or completed pursuant to any Environmental Law, together with all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost-recovery compensation, loss, or injury resulting from the presence, Release, or discharge of any Hazardous Substance.

1.11 Holdback Agreement: That certain Holdback Agreement between Borrower and Beneficiary of even date herewith.

1.12 Improvements: All buildings, structures, appurtenances and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personality.

1.13 In its sole unfettered discretion: as defined in Paragraph 13.8.

1.14 Indenture: This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing.

1.15 Insurance Premiums: as defined in clause (c) of Paragraph 4.3.

1.16 Insurance Proceeds: as defined in paragraph 5.1.

1.17 Laws: as defined in clause (c) of Paragraph 4.2.

1.18 Land: The land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or appertaining to, the Land.

1.19 Leases: All leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof.

1.20 Lease Assignment: That certain Assignment of Rents and Leases between Borrower and Beneficiary of even date herewith and all modifications or amendments thereto or extensions thereof.

1.21 Loan Documents: This Indenture, the Note, the Lease Assignment, the Holdback Agreement, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Beneficiary, except any separate environmental indemnity agreement.

1.22 Note: That certain Promissory Note of even date herewith made by Borrower in favor of Beneficiary in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet, subject to any call option of Beneficiary to accelerate the principal due as may be set forth in the Note).

1.23 Parties in Interest: as defined in clause (d) of Paragraph 8.1.

1.24 Personalty: All of Borrower's interest in any and all personal property (other than Fixtures) of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), general intangibles (including payment intangibles and software), goods (including consumer goods, inventory, equipment and farm products), letter-of-credit rights and deposit accounts (as those terms are defined in the Uniform Commercial Code as now adopted or amended from time to time in the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, motor vehicles and aircraft, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.25 Property: The Realty, the Fixtures and Personalty or any portion thereof or interest therein except as the context otherwise requires.

1.26 Property Liabilities: as defined in clause (d) of Paragraph 4.1.

1.27 Property Taxes and Charges: All real estate taxes and personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to

any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed, and any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

1.28 Realty: the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.29 Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Borrowers, or as the term "release" is otherwise defined in Environmental Law.

1.30 Rents: All rents, royalties, issues, profits, revenue, income, receipts and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.31 Secured Debt: To the extent not prohibited by the Laws, all principal (including, additional sums disbursed under the Holdback Agreement), interest, additional interest, interest at the After-Maturity Rate on all sums applicable thereto, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Beneficiary under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.32 Taking: as defined in Paragraph 5.1.

1.33 Taking Proceeds: as defined in Paragraph 5.1.

1.34 State: as defined on cover hereof.

1.35 User: Any person other than Borrower, who occupies, uses or comes on to or has occupied, used or come onto the Property or any part of it and any agent or contractor of that person.

2. GRANTING CLAUSES. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Trustee, IN TRUST, with all POWERS OF SALE AND STATUTORY RIGHTS in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Beneficiary a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) All Leases and Rents;

(b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;

(c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and

(d) All Insurance Proceeds and all Taking Proceeds.

All of the foregoing, including the Property, is collectively hereinafter referred to as the "Encumbered Property."

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO BENEFICIARY, in such order of priority as Beneficiary may elect:

(1) Payment of the Secured Debt;

(2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Beneficiary or advanced under the Loan Documents (at the After-Maturity Rate), even if the sum of the amounts outstanding at any time exceeds the Note Amount; and

(3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as now adopted and amended from time to time in the State. Time is of the essence.

TO HAVE AND TO HOLD the Property and all parts thereof unto Beneficiary and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Trustee and Beneficiary that the following warranties and representations in this Paragraph are and will be true, correct and complete at all times:

3.1 Due Organization, Authority. If Borrower is an entity, Borrower is duly organized and validly existing, and in good standing under the laws of the state of its organization and duly qualified in the state where the Property is located and has power adequate to carry on its business as presently conducted in such state and in the State, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with

general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3 Other Obligations. Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4 Construction and Completion of Improvements. The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to and approved in writing by Beneficiary. Any unoccupied space in the Improvements has been completed as provided above except for floor and wall coverings. The Improvements are served by electric, gas, sewer, or septic system, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Beneficiary hereunder as part of the Property, whether located on the Property as described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Beneficiary. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to the Beneficiary, and that the Beneficiary will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5 Legal Actions. There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental

authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Beneficiary. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect: (i) the validity or enforceability of the Loan Documents; or (ii) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 Financial Statements. All statements, financial or otherwise, submitted to Beneficiary in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7 Intentionally Omitted.

3.8 Adverse Change to Property. No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9 Title to Property. Borrower has good and clear record and marketable title to the Realty and Fixtures and good and merchantable title to the Personality. Borrower warrants and shall forever defend the title thereto and Beneficiary's first and prior lien thereto unto Beneficiary, its successors and assigns, against the claims of all persons whomsoever.

3.10 Compliance with Laws and Private Covenants. The Property complies with all Laws. The Land is a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land, and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroach upon any easement over the Land or upon adjacent property.

3.11 Independence of the Property. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements, and no Improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

Without the prior written consent of Beneficiary, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property, and shall not without Beneficiary's prior written consent (a) file any declaration and constituent documents of any condominium, townhome, cooperative or planned community development project for the Property, or (b) join in the amendment or rescission of any covenants, conditions, restrictions, rules or regulations now or hereafter affecting the Property. Borrower will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property.

3.12 Environmental. Borrower is a party to and has executed this date in favor of Beneficiary an Environmental Indemnity Agreement dated as of the date hereof and executed by Borrower and Principal (hereinafter defined) in favor of Beneficiary (the "Environmental Indemnity Agreement") which is one of the Loan Documents described herein and which is incorporated herein by reference. For purposes of this Indenture, Borrower hereby restates and confirms the representations and warranties contained in the Environmental Indemnity Agreement and hereby covenants to comply with and perform the obligations contained in the Environmental Indemnity Agreement.

3.13 Compliance with ERISA and State Statutes on Governmental Plans. Borrower is not an "employee benefit plan" as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") nor a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and (ii) the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Borrower represents and warrants to Beneficiary that, as of the date of this Indenture and throughout the term of this Indenture, (i) Borrower is not a "governmental plan" within the meaning of ERISA and (ii) transactions by or with Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

4. BORROWER'S COVENANTS. Until the Secured Debt has been paid in full, Borrower covenants and agrees with Beneficiary as follows:

4.1 Payments.

(a) Secured Debt. Borrower shall pay promptly to Beneficiary, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency all Property Taxes and Charges. Borrower shall furnish Beneficiary with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof. If requested by Beneficiary, Borrower shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Beneficiary.

(c) Taxes on Trustee or Beneficiary. If any Law of the State or the United States or any other governmental authority imposes upon Trustee or Beneficiary the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws

relating to taxation so as to adversely affect the Loan Documents or Trustee or Beneficiary, then Borrower shall pay Property Taxes and Charges or reimburse Trustee and Beneficiary immediately therefor, unless in the opinion of counsel to Trustee or Beneficiary, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

(d) Property Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) Right to Contest. Borrower may, in good faith and diligently, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Beneficiary. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Beneficiary cash or other security to protect the Property against any lien arising out of such Property Taxes and Charges, in form satisfactory to Beneficiary in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower, Trustee or Beneficiary therefor, together with interest, costs and penalties thereon; and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) Expenses. Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees, both outside and in-house counsel, and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents, (ii) Trustee or Beneficiary's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof, and (iii) Trustee or Beneficiary's protection of the Property and its interest therein.

(g) Servicing Fees. Borrower shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Beneficiary or its third-party loan servicer for any servicing-related matter arising during the term of the Loan. Borrower agrees to immediately reimburse Beneficiary or such servicer upon Beneficiary's request for any such legal and/or processing fees and costs.

(h) No Credit on Secured Debt. Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

4.2 Operation of the Property.

(a) Maintenance; Alterations. Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Beneficiary in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personality or Fixtures if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.

(b) Liens. Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) Compliance with Laws and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator, including, but not limited to, the Americans with Disabilities Act and any similar state or local law or regulation ("ADA Laws") and Environmental Law (herein collectively "Laws") and private covenants affecting the Property. Borrower further agrees to comply with and to require all tenants in any present or future lease of all or any part of the Property to comply with all present and future local, state or Federal laws relating to the design, physical characteristics, and operation of improved real property, including, without limitation, ADA Laws, all amendments, regulations, orders, decrees, permits and licenses now or hereafter promulgated thereunder and all laws hereafter enacted or reenactments thereof relating to access and use of real estate by handicapped or physically impaired persons. Borrower shall use its best efforts to give Beneficiary telephonic notice within one (1) day, and shall give Beneficiary written notice (which shall include a copy of any notice received by Borrower) within three (3) days, of Borrower's receipt of any notice received by or on behalf of Borrower with respect to Borrower's noncompliance with any of the provisions of any covenants, conditions or restrictions now or hereafter affecting the Property. If Borrower fails to correct the conditions specified in the notice to it, then Beneficiary may do so at the sole cost and expense of Borrower, and Borrower shall reimburse Beneficiary for such cost and expense upon demand. Any amounts so expended by Beneficiary shall bear interest at the After-Maturity Rate specified in the Note from the date of expenditure until repaid to Beneficiary, and shall be secured by this Indenture.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by Borrower (so long as no default exists under any of the Loan Documents) or a leasing and management agent which has been approved by the Beneficiary prior to execution of any management agreement with the same.

Any change in the use of the Property or the management agent shall be subject to the prior written approval of Beneficiary.

(e) Inspection; Right of Entry. Borrower grants to Beneficiary and its agents, employees, consultants, and contractors the right to enter on the Property without delay, hindrance or restriction for the purpose of making any inspections, reports, tests (including, without limitation, soils borings, groundwater testing, wells, or soils analysis), inquiries, and reviews that Beneficiary, in its sole unfettered discretion, deems necessary to assess the then current condition of the Property. Beneficiary will provide Borrower with one (1) business day's notice of the entry. However, Borrower's consent will not be required for such entry or for the performance of tests. All costs, fees, and expenses incurred by Beneficiary with respect to the inspections, reports, tests, inquiries, and reviews will be paid by Borrower to Beneficiary on demand, will accrue interest at the After-Maturity Rate until paid, and will be secured by this Indenture, prior to any right, title, or interest in or claim on the Property attaching subsequent to the lien of this Indenture.

(f) Unlawful Use and Prohibited Activities. The Borrower shall not use, occupy, or permit the use or occupancy of any Property by the Borrower or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy or possession of any Property (collectively a "lease") with any third person ("lessee") entered into after the date of this Indenture shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. The Borrower shall upon demand from Beneficiary provide Beneficiary with a written statement setting forth its compliance with this section and stating whether any Prohibited Activities are occurring in, on or around the Property. If the Borrower becomes aware that any lessee is likely engaged in any Prohibited Activities, the Borrower shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities.

This section is a material consideration and inducement upon which Beneficiary relies in extending credit and other financial accommodations to the Borrower. Failure by the Borrower to comply with this section shall constitute a material non-curable Event of Default. Notwithstanding anything in this Indenture, the Note or any of the other Loan Documents regarding rights to cure Events of Default, Beneficiary is entitled upon breach of this section to immediately exercise any and all remedies under this Indenture, the Note, any of the other Loan Documents, and by law.

In addition and not by way of limitation, the Borrower shall indemnify, defend and hold Beneficiary harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Property, Prohibited Activities by the Borrower or any lessee of the Property, or the Borrower's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property (with or without compensation to Beneficiary, and whether or not Property is taken free of or subject to Beneficiary's lien or security interest).

4.3 Insurance Requirements.

(a) Insurance Policies. Borrower shall obtain and keep in force, with one or more insurers acceptable to Beneficiary meeting the requirements of Paragraph 4.3(c) below, such insurance as Beneficiary may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$2,000,000 per occurrence, \$4,000,000 aggregate (and naming Beneficiary as an additional insured thereunder); (ii) protection against “extended coverage” and other “All-Risk” perils, including, where required, flood, to the full replacement value of the Property with a waiver of subrogation, replacement cost, and difference in conditions endorsements, (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months’ rental income from all Leases and naming Beneficiary as loss payee thereunder; and (iv) and such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, sinkhole, mine subsidence, terrorism, mold and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy, and earthquake insurance in an amount acceptable to Beneficiary in accordance with Beneficiary’s Seismic Risk Policy, as may be amended from time to time, with no more than a ten percent (10%) of Insurable Value (defined below) deductible.

(b) Minimum Requirements. The property policy shall provide insurance in an amount equal to the lesser of (i) the appraised value of the Property, determined on the cost approach of appraisal, less land and approved soft costs, as shown on a current full narrative appraisal of the Property, acceptable to Beneficiary in form and content and conducted by an appraiser acceptable to Beneficiary (the “Approved Appraisal”) or (ii) the insurable value as set forth in the Approved Appraisal (the “Insurable Value”).

(c) Required Provisions. All property insurance policies shall include the standard mortgage clause in the State naming Beneficiary as the first mortgagee with loss payable to Beneficiary as such mortgagee, shall not be cancelable or modifiable without thirty (30) days’ prior written notice to Beneficiary, shall not have more than a \$25,000 deductible for any single Casualty, and if the policy provides for co-insurance, shall contain provide an agreed amount endorsement. All public liability insurance policies shall name the Beneficiary as an additional insured. Borrower shall provide Beneficiary with evidence of compliance with this Paragraph 4.3 in such forms as required from time to time by Beneficiary upon notice from Beneficiary or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums (“Insurance Premiums”) or accompanied by other evidence satisfactory to Beneficiary that such payment has been made shall be delivered by Borrower to Beneficiary. Such insurance policies shall be written by insurance companies licensed to do business in the state where the Property is located and (i) have a minimum rating of “A+/IX” according to Best’s Insurance Reports - Property/Casualty Edition, (ii) have a claims paying rating of at least single “A” by two approved rating agencies, and (iii) must be a stock company or a non-assessable mutual company located in a country acceptable to Beneficiary.

(d) Waiver of Subrogation. Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Trustee and Beneficiary. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

(e) No Liability of Beneficiary. Beneficiary shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

(f) Insurance Company Requirements. Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

(g) Transfer of Property. Upon sale of any of the Property for default in performance of any obligation hereby secured or other transfer of title or assignment of the Property in discharge, in whole or in part, of the Secured Debt, all rights, title and interests of Borrower in and to all policies of hazard or other insurance policies required hereunder on or obtained in connection with the Property so sold or transferred shall pass to and inure to the benefit of the purchaser of such Property at such sale or transfer, and Beneficiary is hereby irrevocably authorized, said power being coupled with an interest, to assign in Borrower's name to such purchaser all such policies, which may be amended or rewritten to show the interest of such purchaser.

4.4 Escrow. Subject to the following paragraph, Borrower shall pay to Beneficiary monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Beneficiary from time to time estimates will be required to pay all Property Taxes and Charges and Insurance Premiums before becoming past due. Beneficiary's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made adjusted to reflect for any anticipated or known increases for the coming year. Beneficiary may require Borrower to pay one-sixth (1/6th) of said estimate as escrow overage, which may be retained by Beneficiary in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Beneficiary on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Beneficiary has received from Borrower or on its account funds sufficient to pay the same, Beneficiary shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Beneficiary at its discretion even though subsequent owners of the Property may benefit thereby. Beneficiary shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds. Upon the occurrence of an Event of Default hereunder, Beneficiary may apply, at any time and in such order as Beneficiary may determine, the balance then remaining in the account accumulated under this Paragraph against the amounts due and payable under the Note, this Indenture or any other Loan Document.

Beneficiary agrees to waive the requirements under the foregoing paragraph that Borrower pay to Beneficiary monthly escrow installments for Property Taxes and Charges and Insurance Premiums subject to the following conditions ("Conditions") and further reservation set forth below:

- (a) No default after any applicable period of notice and cure shall exist under the Note or the Loan Documents;
- (b) No change shall occur in the ownership or management of the Property; and
- (c) Subject to the provisions of Paragraph 4.1(e) hereof, Property Taxes and Charges and Insurance Premiums shall be paid promptly when due and without accrual of interest or penalty, and Borrower shall promptly furnish to Beneficiary satisfactory evidence of such payment on an annual basis.

Notwithstanding the foregoing, Beneficiary reserves the right to revoke its waiver (x) if any one or more of the Conditions are at any time not satisfied or (y) at such time as Beneficiary, in its sole unfettered discretion, deems such revocation necessary to protect the security granted by this Indenture or any of the other Loan Documents.

4.5 Sales and Encumbrances.

(a) Borrower shall not, without the prior written consent of Beneficiary, which consent, if given by Beneficiary in its sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, delivery of a management contract approved by Beneficiary with a management company approved by Beneficiary, and/or the satisfaction of other conditions required by Beneficiary or one or more of the foregoing or other requirements of Beneficiary:

(i) Property, Leases or Rents. Convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the Rents, whether or not for value and whether voluntarily or involuntarily, except the lien in favor of Beneficiary under the Indenture; or

(ii) Interest in Borrower. Sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of any legal or beneficial interest in Borrower (or in any entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in the Borrower), whether in the form of a beneficial, stock ownership, membership or partnership interest or in the form of a power of direction, control or management, or otherwise (all said encumbrances, sales, contracts, leases or other transfers described above being collectively described as a "Prohibited Transfer").

Any breach of the foregoing by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Paragraph 8.1(a), and, in addition to each and every of Beneficiary's rights and remedies under the Loan Documents for such default, Borrower

shall be immediately obligated to pay Beneficiary a sum equal to the Assumption Fee, as hereinafter defined which shall not be deemed liquidated damages.

Beneficiary's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Beneficiary's security or whether or not it may or may not be reasonable (commercially or otherwise) for Beneficiary to consent to any Prohibited Transfer. Without limiting the foregoing, Beneficiary's consent may, if given in Beneficiary's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): the payment of an assumption fee, an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee or transferee, a management contract acceptable to Beneficiary with a manager acceptable to Beneficiary, an assignment to Beneficiary of any security given to Borrower in connection with the transaction, including without limitation any purchase money second mortgage and/or a change in any of the other terms and conditions of this Indenture or in any of the Loan Documents.

(b) Notwithstanding the foregoing, the initial Borrower may make a one-time sale of the Property to a purchaser (the "Proposed Borrower") without a change in loan terms, provided that (a) at least thirty (30) days prior to the proposed transfer, Borrower shall provide Beneficiary with notice of and a detailed explanation of the proposed transaction and such financial information and other documentation regarding the Proposed Borrower and such individuals who are required by Beneficiary (the "Proposed Principals") as the Beneficiary may request, (b) the Proposed Borrower and the Proposed Principals meet Beneficiary's credit, management and other criteria, as may be determined by Beneficiary in its sole unfettered discretion, including the Operating Information (defined below), (c) the Proposed Borrower, the Proposed Principals and Borrower execute assumption documentation acceptable to Beneficiary, by which the Proposed Borrower assumes the obligations of Borrower under the Loan Documents and the Proposed Principals assume the obligations of the Principals (as defined in Paragraph 4.5(c) below) under the Loan Documents, and, further, the Proposed Borrower and the Proposed Principals execute an environmental indemnity agreement, a limited guaranty/guaranty and such other documents as Beneficiary shall require in connection with the assumption of the Loan, and pay Beneficiary's expenses (including, without limitation attorneys' fees and costs, recording fees and title endorsement charges) incurred by Beneficiary in connection with the review, approval and documentation of the assumption, (d) the Borrower or the Proposed Borrower, at their expense, cause the Beneficiary's mortgagee's title insurance policy to be endorsed showing no adverse change in title to the Property, in connection with said assumption, (e) the Proposed Borrower pays Beneficiary an assumption fee (the "Assumption Fee") equal to one percent (1%) of the loan balance at the time of approval of assumption or closing at Beneficiary's option, (f) Beneficiary shall have approved any management agreement to be executed by the Proposed Borrower and any such management agreement shall be subordinated to this Indenture and the other Loan Documents, by subordination agreement acceptable to Beneficiary; and (g) no Event of Default exists under any of the Loan Documents and no event has occurred which with the passage of time or the giving of notice or both could become an Event of Default, and (h) Borrower provides documentation, including operating statements and a rent roll, and any other documentation regarding the operation of the Property as Beneficiary shall request (the "Operating Information").

Nothing contained herein or in any assumption document shall be construed to require Beneficiary to approve any Proposed Borrower or Proposed Principal or to release Borrower, any

guarantor or the Principals (as defined in Paragraph 4.5(c) below) from any obligations under the Loan Documents, any guaranty or environmental indemnity agreement.

(c) Family/Controlled Entity Transfers. Further, provided no Event of Default exists under any of the Loan Documents and no event has occurred which, with the passage of time or giving of notice, or both, could become an Event of Default, a Transfer (as defined below) may be made of ownership interests held by any of Ken R. Crockett, Mark S. Koehler or Douglas M. Durbano (collectively referred to as the "Principals" and individually referred to as "Principal") in (i) Borrower, or (ii) any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (A) another Principal, (B) a Family Member (as defined below) of a Principal, or (C) a trust established for the benefit of the Principal and/or Family Member(s) of a Principal; provided, however, that (I) any such Transfer of an ownership interest shall not cause a change in management or Control (as defined below) of Borrower (or any entity owning an ownership interest in the Borrower) and after any such Transfer, the Principals shall maintain the same right and ability to manage and Control the Borrower (or any entity owning an ownership interest in the Borrower) as existed prior to the Transfer and (II) Beneficiary shall be provided with written notice of any such Transfer and furnished with complete copies of fully executed instruments effectuating the Transfer no later than fifteen (15) days prior to the date of the Transfer, and transferor and/or transferee shall execute such documents a Beneficiary shall require. "Transfer" shall mean any change in the direct or indirect ownership interests of an entity or other ownership components of such entity. "Family Member" shall mean an adult who is a spouse, sibling or lineal descendant of the Principal, or a spouse of such sibling or lineal descendant. Transfers to minors, who but for their minority would fall within the definition of Family Member, shall not be permitted unless the transfer is to a trust or custodian under the Uniform Gifts to Minors Act or similar custodial law. "Control" shall mean the power or authority, directly or indirectly through one or more intermediaries, through the ownership of voting ownership interests, by contract or otherwise, to direct the management, activities and policies of such entity.

(d) Additional Permitted Transfers. In addition to the transfers permitted in subparagraph (c) above, provided the Loan is not then in default and no event has occurred which, with the passage of time, could lead to a default, and subject to the management and control provisions in subparagraph (c) above, up to twenty five percent (25%) of the aggregate ownership interests in Borrower, whether direct or indirect, may be sold, given, devised, bequeathed or otherwise transferred provided the proposed transferee is identified by written notice to Beneficiary no later than fifteen (15) days prior to the date of the transfer and further provided that the transferee is not on the OFAC list (defined below) or on the SDN List (defined below).

Any transfer permitted by this subparagraph 4.5(c) and (d) shall not relieve the Borrower, any guarantor or the Principals from their obligations under the Loan Documents, any guaranty or environmental indemnity agreement.

4.6 Financial Records and Statements. Borrower shall keep accurate books and records in accordance with generally accepted accounting principles, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit

all such books and records to be inspected and copied by Beneficiary, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Beneficiary within sixty (60) days after the end of each calendar year a statement of condition or balance sheet of Borrower relating solely to the Property as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy at Beneficiary's option: (i) by Borrower; or (ii) if an Event of Default exists, by an independent certified public accountant acceptable to Beneficiary (said documents need not be audited but shall be reviewed); and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to accuracy by a representative of Borrower acceptable to Beneficiary, and in form and substance satisfactory to Beneficiary. On Beneficiary's request at all reasonable times and on reasonable notice, Beneficiary shall have the right to audit Borrower's books of account and financial records, all of which will be made available to Beneficiary and/or Beneficiary's representatives for that purpose.

In addition, the Borrower and Principals shall deliver or cause to be delivered to Beneficiary, their respective balance sheets and income and expense statements under original signature within sixty (60) days after the end of each calendar year.

4.7 Further Assurances. Borrower shall promptly upon request of Beneficiary: (i) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; or (ii) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases); or (iii) join with the Beneficiary in notifying any third party, who is in possession of any Personality, of Beneficiary's security interest in such Personality and obtaining the acknowledgment from such third party that it is holding such Personality for the benefit of Beneficiary; or (iv) cooperate with Beneficiary in obtaining control (as defined in the Uniform Commercial Code as now adopted and amended from time to time in the State) with respect to Personality consisting of deposit accounts, letter-of-credit rights and electronic chattel paper and do such further acts, in any case as may be necessary, desirable or proper in Beneficiary's opinion to (a) carry out more effectively the purposes of the Loan Documents, (b) protect and preserve the first and valid lien and security interest of this Indenture on the Encumbered Property or to subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto or (c) protect the interest and security interest of Beneficiary in the Encumbered Property against the rights or interests of third parties. By signing this Indenture, Borrower authorizes Beneficiary to file such financing statements, with or without the signature of Borrower, as Beneficiary may elect, as may be necessary or desirable to perfect the lien of Beneficiary's security interest in the Fixtures and Personality. Borrower further authorizes Beneficiary to file, with or without any additional signature from Borrower, as Beneficiary may elect, such amendments and continuation statements as Beneficiary may deem necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Fixtures and Personality. Borrower hereby expressly ratifies any financing statements that may have been filed by Beneficiary in advance of the date hereof to perfect Beneficiary's security interest in the Fixtures and Personality. Borrower hereby appoints Beneficiary as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf

of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8 Indemnity. Borrower shall indemnify, defend and hold harmless Trustee and Beneficiary from and against, and, upon demand, reimburse Trustee or Beneficiary for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by either Trustee or Beneficiary by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Beneficiary on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Trustee or Beneficiary, whereupon the exception shall apply only against Trustee or Beneficiary as the case may be.

4.9 No Preferences. Borrower shall not repay any sums borrowed from anyone other than Beneficiary, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10 Notices. Borrower shall deliver to Beneficiary at Beneficiary's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases. Borrower shall promptly give written notice of any litigation commenced or threatened affecting Borrower or the Property.

4.11 Loan Estoppel Certificates. Borrower shall promptly furnish to Beneficiary from time to time, on the request of Beneficiary, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Beneficiary.

4.12 Legal Existence and Place of Business. If Borrower as an entity is executing this instrument:

(a) Authorization; Organization. Borrower warrants that Borrower (i) is duly organized and validly existing, in good standing under the laws of the state of its organization, (ii) is duly qualified to do business and is in good standing in the state of its organization and in the state where the Property is located, (iii) has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) has duly authorized by all necessary action the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof.

(b) Dissolution; Disposition of Assets; State of Organization. Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not change, dissolve or liquidate (in whole or in part) its existence, that it will maintain its

existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity, and will not change the state of its organization, without the prior express written consent of Beneficiary except as may be otherwise provided herein.

(c) Place of Business. Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied it will not change its place of business, or if it has more than one place of business, it will not change its chief executive office (i.e. the place from where the Borrower manages the main part of its business operations or affairs), unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13 Place of Residence. If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied, Borrower will not change his/her place of residence, unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.14 Borrower Name or Identity. Borrower shall not change its name or identity unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.15 Defense and Notice of Actions. Borrower shall, without liability, cost or expense to Trustee or Beneficiary, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Trustee or Beneficiary, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Trustee or Beneficiary or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.16 Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note.

4.17 Personalty and Fixtures. Borrower shall use the Personalty and Fixtures primarily for business purposes and keep the Personalty at the Land. Borrower shall immediately notify Beneficiary in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Beneficiary, upon any acquisition of items of

property constituting Personality or Fixtures, Borrower shall provide Beneficiary with a current, accurate inventory of the Personality and Fixtures. Borrower will not permit any of the Fixtures or Personality to be removed at any time from the Realty without the prior written consent of Beneficiary unless actually replaced by articles of equal suitability and value owned by Borrower free and clear of any lien or security interest except as may be approved in writing by Beneficiary.

4.18 Obligations. Borrower will timely perform all covenants, agreements, terms and conditions to be performed by Borrower under this Indenture and as required of Borrower under the Loan Documents.

4.19 SDN List. An Event of Default shall exist, without notice or cure rights, if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the "SDN List"): (a) any Borrower; (b) any Principal (as defined in the Commitment or any Loan Document); (c) any guarantor or indemnitor; or (d) any person or entity related to any Borrower, any Principal, any guarantor, any indemnitor, the Secured Debt or the Property.

4.20 Single Purpose Entity. At all times during the term of this Indenture and until the Secured Debt is fully and indefeasibly paid in full, the Borrower must be a "single purpose entity", which means that it satisfies each of the following conditions:

(a) the Borrower does not engage in any business or activity other than the ownership, operation and maintenance of the Property and activities incidental thereto, and the Borrower has not acquired, owned, held, leased, operated, managed, maintained, developed or improved any assets other than the Property;

(b) the Borrower preserves its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization and observes all organizational formalities to maintain its existence as a legal entity separate and apart from its owners; and

(c) the Borrower has not and will not merge or consolidate with any other entity.

5. CASUALTIES AND TAKINGS.

5.1 Notice to Beneficiary. In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Beneficiary describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Beneficiary copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2 Repair and Replacement. In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds

exist or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Beneficiary. Provided, however, upon a Casualty or Taking, if Beneficiary applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is practicable under the circumstances.

5.3 Proceeds.

(a) Collection. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment of compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Beneficiary may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Beneficiary's prior written consent.

(b) Assignment to Beneficiary. Borrower hereby assigns, sets over and transfers to Beneficiary all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Beneficiary. Beneficiary may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Beneficiary in its sole unfettered discretion, even if the proceeds in such case are in an amount less than would be available if applied to repair or replacement; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Beneficiary may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Beneficiary shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Beneficiary shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

6. CONCERNING TRUSTEE.

6.1 Trustee's Covenants. Trustee, by Trustee's acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct.

6.2 Resignation of Trustee. Trustee may resign at any time upon giving thirty (30) days' notice in writing to Borrower and to Beneficiary.

6.3 Substitution of Trustee. In the event of the death, removal, resignation, refusal to act, or the inability to act of Trustee or in Beneficiary's sole unfettered discretion for any reason whatsoever or for no reason, Beneficiary may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor Trustee. Neither Trustee nor any substitute Trustee shall be required to give bond for the faithful performance of its duties unless required by Beneficiary. Such substitute Trustee shall be appointed by written instrument duly recorded in the county where the Realty is located, which appointment may be executed by an authorized agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors and any superior officer of Beneficiary. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee, or its successors or assigns in this trust, shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of itself and of its heirs, executors, administrators and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute Trustee, acting under the provisions of this Indenture, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

6.4 Reconveyance and Agreements. At any time, or from time to time, without liability therefor and without notice upon written request of Beneficiary and presentation of this Indenture and the Note or notes secured hereby for endorsement, and without affecting the personal liability of any person for the payment of the Secured Debt or the effect of this Indenture upon the remainder of the Property, Trustee may reconvey any part of the Property, consent in writing to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

6.5 Release of Lien. Upon written request of Beneficiary stating that the Secured Debt has been paid and payment of Trustee's fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.6 Exculpation and Indemnification of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by Trustee in good faith to be genuine. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law), and Trustee shall be under no liability for interest on any monies received by it hereunder (except to the extent required by Law). Borrower will reimburse Trustee for, and indemnify, save harmless and defend Trustee against, any and all liability and expense (including, without limitation, attorneys' fees and expenses) which Trustee may incur in performance of its duties under the Loan Documents.

7. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Beneficiary shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Beneficiary's sole unfettered discretion, affect the Property, the Leases, the Rents or any of the rights created by the Loan Documents.

8. **DEFAULTS; REMEDIES OF BENEFICIARY.**

8.1 **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

- (a) **Breach of Named Covenant.** Any breach by Borrower of the covenants in the Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or
- (b) **Misrepresentations.** Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled; or
- (c) **Breach of Covenant.** Any breach by Borrower of any other covenant in the Loan Documents or any covenant contained in any of the Leases or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any covenant contained in any of the Leases or any certificate or side letter delivered in connection with the Loan Documents; or
- (d) **Bankruptcy.** Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Beneficiary: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partner or joint venturer, or if a limited liability company, any managing member or majority (or other controlling) member (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due, or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment, or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent, or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof, or (v) any composition, rearrangement, liquidation, extension,

reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a part of the Property, or the Property is taken on execution or by other process of law; or

(f) Suspension. Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents dies, terminates or suspends its business; or

(g) Other Events. Any other event occurs which, under the Loan Documents, constitutes a default by the Borrower or gives the Beneficiary the right to accelerate the indebtedness secured by this Indenture.

8.2 Remedies. In case of an Event of Default, Beneficiary may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable.

(b) Foreclosure. Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Beneficiary.

(c) Offset Rights. Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Beneficiary to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4.

(d) Cure of Default. Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Beneficiary may enter upon the Property and do such acts and things as Beneficiary deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities, as defined in Paragraph 4.1(d); (ii) paying any Insurance Premiums, and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary in the foregoing. Should Beneficiary make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Beneficiary therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate until repaid.

(e) Possession of Property. Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing any default. If necessary to obtain

possession as provided for above, Beneficiary may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower. In connection with any action taken by Beneficiary pursuant to this subparagraph (e), Beneficiary shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Beneficiary in managing the Property unless caused by the willful misconduct or gross negligence of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Beneficiary from and against any liability, loss or damage incurred by Beneficiary under any Lease or under the Loan Documents as a result of Beneficiary's exercise of rights or remedies under any of the Loan Documents. Should Beneficiary incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Beneficiary therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate until repaid. Beneficiary shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Beneficiary.

(f) Remedies under State Law. Beneficiary shall have the right to exercise all rights under Laws of the State, whether or not herein specified, including without limitation Beneficiary's rights to foreclose by power of sale as provided herein.

(g) Power of Sale.

(1) Notices of Default and Sale. If Beneficiary elects to foreclose by exercise of the power of sale in this Indenture, Beneficiary will deposit with Trustee copies of this Indenture, the Note, and any receipts and evidence of expenditures made and secured as Trustee may require. If notice of default has been given as then required by law, and after lapse of the time that may then be required by law, after recordation of the notice of default, Trustee, without demand on Borrower, will, after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels as Trustee determines, and in any order that it may determine, at public auction to the highest bidder. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time after that may postpone the sale by public announcement at the time fixed by the preceding postponement, and without further notice make the sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any notice of default at any time before Trustee's sale by executing a notice of rescission and recording it. The recordation of the notice will constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of the Secured Debt affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission will not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the Note or this Indenture, or any of the rights, obligations, or remedies of Beneficiary or Trustee. After sale, Trustee will deliver to the purchaser its deed conveying the property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts will be conclusive proof of their truthfulness. Any person, including Borrower, Trustee, or Beneficiary, may purchase at that sale. If allowed by law, Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price

the amount of all or any part of the indebtedness secured hereby. Borrower expressly waives any right of redemption after sale that Borrower may have at the time of sale or that may apply to the sale.

(2) Trustee's Deed; Proceeds. Trustee, upon the sale, will make (without any covenant or warranty, express or implied), execute and, after due payment made, deliver to a purchaser and its heirs or assigns a deed or other record of interest, as the case may be, to the Property sold, which will convey to the purchaser all the title and interest of Borrower in the Property and will apply the proceeds of the sale in payment: (i) first, of the expenses of the sale together with the expenses of the Trustee, including, without limitation, attorneys' fees, that will become due on any default made by Borrower, and also any sums that Trustee or Beneficiary have paid for procuring a search of the title to the Property subsequent to the execution of this Indenture; and (ii) second, in payment of the Secured Debt then remaining unpaid, and the amount of all other monies with interest in this Indenture agreed or provided to be paid by Borrower. Trustee will pay the balance or surplus of the proceeds of sale to Borrower and its successors or assigns as their interests may appear.

(h) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Beneficiary. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents pursuant to the Lease Assignment.

(i) Uniform Commercial Code Remedies. Exercise any and all rights of a secured party with respect to the Personality or Fixtures under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for those rights and remedies: (i) take possession of, assemble and collect the Personality or render it unusable by Borrower; and (ii) require Borrower to assemble the Personality and make it available at any place Beneficiary may designate so as to allow Beneficiary to take possession or dispose of the Personality. Written notice mailed to Borrower, as provided herein, ten (10) days prior to the date of public sale of the Personality or prior to the date after which private sale of the Personality will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of Property as provided in this Indenture. In the event of a foreclosure sale, whether made by Beneficiary under the terms hereof, or under judgment of a court, the Personality and the other parts of the Property may, at the option of Beneficiary, be sold in parts or as a whole. It shall not be necessary that Beneficiary take possession of the Personality prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personality be present at the location of such sale.

(j) Judicial Actions. Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy.

(k) Subrogation. Have and exercise all rights and remedies of any person, entity or body politic to whom Beneficiary renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record.

(l) Other. Take such other actions or commence such other proceedings as Beneficiary deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws. In the case of the occurrence of an Event of Default under Paragraph 4.19 hereof, Beneficiary shall have the right to take any and all action or to make any report or notification required by OFAC or any other applicable governmental entity or agency or by the Laws relating to the SDN list.

(m) Advances, Expenses by Beneficiary. Any sums advanced or expenses incurred by Beneficiary under this Paragraph 8.2, including but not limited to attorneys' fees (both outside and in-house counsel), costs and other expenses, shall bear interest at the After-Maturity Rate, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

(n) Amounts Applied to Secured Debt. All sums realized by Beneficiary under this Paragraph 8.2, less all costs and expenses incurred by Beneficiary under this Paragraph 8.2, including, without limitation, attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Beneficiary and all expenses incident to Beneficiary taking possession of the Property, and such sums as Beneficiary deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Beneficiary shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

8.3 Holding Over. Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Beneficiary, at a reasonable rental per diem, based upon the value of the Property occupied computed by Beneficiary in its sole unfettered discretion, such rental to be due and payable daily to Beneficiary.

8.4 General Provisions.

(a) Multiple Sales. To the extent permitted by law, several sales may be made pursuant to Paragraph 8.2 without exhausting Beneficiary's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 8.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) Cumulative Remedies. All of the rights, remedies and options set forth in Paragraph 8.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Beneficiary.

(c) Right to Purchase. At any sale or sales of the Property pursuant to Paragraph 8.2, Beneficiary shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid), the amount of the Secured Debt then due.

(d) Right to Terminate Proceedings. Beneficiary may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 8.2, terminate, without prejudice to Beneficiary, such proceedings or actions.

(e) No Waiver or Release. Beneficiary may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Beneficiary to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Beneficiary and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Beneficiary to Borrower or any other person or entity, shall operate to release or in any manner affect Beneficiary's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so, Borrower hereby:

(1) Redemption; Valuation. Agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any Laws now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisement, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(2) Marshalling of Assets. Waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Beneficiary to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(3) Counterclaims; Setoff. Waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Beneficiary's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Beneficiary's action;

(4) Suretyship. Waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(5) Laches; Statutes of Limitation. Waives the defense of laches and any applicable statutes of limitation.

(g) Beneficiary's Discretion. Beneficiary may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) Sales. In the event of a sale or other disposition of the Property pursuant to Paragraph 8.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any Trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or Lease.

9. POSSESSION AND RECONVEYANCE.

9.1 Possession. Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

9.2 Reconveyance. If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Beneficiary shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by Law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Beneficiary shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

10. SECURITY AGREEMENT.

10.1 Grant of Security Interest. Borrower also grants to Beneficiary a security interest in all of Borrower's right, title, and interest now owned or later acquired to the following property (collectively, "Collateral") now or later affixed to or located on the Property, or used in connection with the operation of the Property or the Improvements and all the proceeds of that property: the Personality; the Fixtures; all security and cleaning deposits collected from any tenants or lessees of any part of the Property, all deposits collected from purchasers pursuant to contracts for sale of the Property or any portion of the Property; and, subject to the other provisions of this Indenture, all proceeds of any fire and builders' risk insurance policy, or of any policy insuring the Property (and the contents of the Improvements) against any other perils, all awards made in eminent domain proceedings, or purchased in lieu of that, made with respect to the Property, and any compensation, award, payment, or relief given by any governmental agency or other source because of damage to the Property resulting from earthquake, flood, windstorm, or any emergency or any other event or circumstance. The security interest also includes all additions to, substitutions for, changes in, or replacements of the whole or any part of these articles of property, together with all contract rights of Borrower in construction contracts, bonds, agreements for purchase and sale of the Property, all policies of insurance arising out of the improvement or ownership of the Property, and all accounts, contract rights, chattel paper, instruments, general intangibles, and other obligations of any kind now or later existing, arising out of, or in connection with the operation or development of the Property, and proceeds of the foregoing.

10.2 Security Agreement; Remedies. This Indenture constitutes a security agreement with respect to the Collateral in which Beneficiary is granted a security interest. Beneficiary has all of the rights and remedies of a secured party under the Utah Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Borrower agrees to execute and deliver on demand (or file as applicable), and irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Borrower (such power being coupled with an interest) to execute, deliver, and file, any security agreements, financing statements, continuation statements, or other instruments that Beneficiary may request to impose, perfect, or continue the perfection of the lien or security interest created by this Indenture.

10.3 Fixture Filing.

(a) Financing Statement. This Indenture constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to all Fixtures and with respect to any goods, Collateral, or other personal property that may now be or later become Fixtures in accordance with Section 70A-9A-

502 of the Utah Uniform Commercial Code, as the same may be amended or recodified from time to time.

11. ASSIGNMENT OF LEASES AND RENTS.

11.1 Assignment. Borrower irrevocably assigns to Beneficiary the Leases and the Rents. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and the Rents is not contingent on, and may be exercised without, possession of the Property.

11.2 License. Beneficiary grants to Borrower a license ("License") to collect and retain the Rents as they become due until the occurrence of an Event of Default. Upon an Event of Default, the License will be automatically revoked and Beneficiary may collect and retain the Rents without notice and without taking possession of the Property. Borrower irrevocably authorizes and directs the lessees under the Leases to rely on and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums that may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases. The lessees will have no right or duty to inquire as to whether any default has actually occurred or is then existing. Borrower relieves the lessees from any liability to Borrower by reason of relying on and complying with any notice or demand by Beneficiary.

11.3 Effect of Assignment. The assignment will not impose on Beneficiary any duty to produce the Rents or cause Beneficiary to be: (i) a "mortgagee-in-possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any of the Leases; or (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property. Beneficiary will not be liable to Borrower or any other party as a consequence of the exercise of the rights granted to Beneficiary under this assignment or the failure of Beneficiary to perform any obligation of Borrower arising under the Leases.

11.4 Leasing Covenants. Borrower covenants and agrees as follows:

(a) Borrower Covenants. Borrower, at Borrower's sole cost and expense shall: (i) perform all obligations of the lessor under the Leases and enforce performance by the lessees of their obligations under the Leases; (ii) subject to the provisions of Paragraph 11.4(b)(iv) below, enforce all remedies available to Borrower in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration, or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases; (iii) give Beneficiary prompt notice of any default that occurs under any of the Leases, whether by the lessees or Borrower; and (iv) promptly upon execution, deliver to Beneficiary fully executed counterpart originals of the Leases; and

(b) Consent Required. Borrower shall not, without Beneficiary's prior written consent: (i) modify Borrower's form apartment lease after the date of this Indenture; (ii) execute any other assignment relating to any of the Leases or the Rents; (iii) discount any rent or other sums due under the Leases or collect them in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) except in the ordinary and prudent course of operating an apartment project, terminate, modify, or amend any of the terms of the Leases or

release or discharge the lessees from any obligations; (v) except in the ordinary and prudent course of operating an apartment project, consent to any assignment or subletting by any lessee; or (vi) subordinate any of the Leases to any other deed of trust or encumbrance. Any attempted action in violation of the provisions of this Paragraph 11.4(b) will be voidable at Beneficiary's election.

11.5 Intentionally Omitted.

12. ENVIRONMENTAL PROVISIONS.

12.1 Environmental Representations and Warranties. Except as disclosed in writing to, and acknowledged in writing by, Beneficiary, Borrower represents and warrants that:

(a) No Hazardous Substances. During the period of Borrower's ownership of the Property; (i) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by any person on or around the Property; and (ii) there have been no Hazardous Substances transported over or through the Property;

(b) No Prior Use; Litigation. After diligent inquiry, Borrower has no knowledge of, or reason to believe that, there has been: (i) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Property or by any third parties onto the Property; or (ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) Permitted Levels; Reportable Quantities. No Hazardous Substances in excess of permitted levels or reportable quantities under applicable Environmental Law are present in or about the Property or any nearby real property that could migrate to the Property;

(d) Releases. No Release or threatened Release exists or has occurred;

(e) Underground Storage Tanks. No underground storage tanks of any kind are or ever have been located in or about the Property;

(f) Compliance with Environmental Law. (i) The Property and all operations and activities at, and the use and occupancy of, the Property, comply with all applicable Environmental Law; and (ii) Borrower and every user of the Property has, and is now in strict compliance with, every permit, license, and approval required by all applicable Environmental Law for all activities and operations at, and the use and occupancy of, the Property;

(g) No Claims. To the best of Borrower's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Borrower or any guarantor;

(h) Use of Property. That the current use of the Property is as a multifamily apartment complex;

(i) Disclosures. Any written disclosure submitted by or on behalf of Borrower to Beneficiary concerning any Release or threatened Release, past or present compliance by Borrower, or any User or other person of any Environmental Law applicable to the Property, the past and present use and occupancy of the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Indenture.

12.2 Environmental Covenants. Borrower agrees as follows:

- (a) Use of Property. Except in the ordinary course of business and in strict compliance with all applicable Environmental Law, not to cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any Hazardous Substance;
- (b) Release. Not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;
- (c) Change of Property Use. Not to change or modify the use of the Property without the prior written consent of Beneficiary;
- (d) Compliance with Environmental Law. To comply with and to cause the Property and every User of the Property to comply with all Environmental Law;
- (e) Notices. To immediately notify Beneficiary in writing and to provide Beneficiary with a reasonably detailed description of: (i) any noncompliance of the Property with any Environmental Law; (ii) any Hazardous Substance Claim; or (iii) any Release or threatened Release;
- (f) Violation of Environmental Law. In the event that Borrower discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Environmental Law, to: (i) notify Beneficiary of that discovery together with a reasonably detailed description; (ii) promptly after a request by Beneficiary, engage a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Borrower; and (iii) take, at Borrower's sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Environmental Law or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims. Such actions shall be performed: (i) in accordance with Environmental Law; (ii) in a good and proper manner; (iii) under the supervision of a qualified environmental engineer approved in writing by Beneficiary; (iv) in accordance with plans and specifications for these actions approved in writing by Beneficiary; and (v) using licensed and insured qualified contractors approved in writing by Beneficiary;
- (g) Delivery of Material. To immediately furnish to Beneficiary copies of all written communications received by Borrower from any governmental authority or other person or given by Borrower to any person and any other information Beneficiary may reasonably request

concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Environmental Law; and

(h) Information. Keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Environmental Law.

12.3 Inspection and Receivership Rights. Upon Beneficiary's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Borrower in connection with the making of the Loan or the execution of this Indenture or upon Beneficiary's reasonable belief that Borrower has failed to comply with any environmental provision of this Indenture or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Borrower, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater, and all books, records, and files of Borrower relating to the Property) and perform those acts and things that Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security of this Indenture, for the purpose of determining: (i) the existence, location, nature, and magnitude of any past or present Release or threatened Release; (ii) the presence of any Hazardous Substances on or about the Property in violation of any Environmental Law; and (iii) the compliance by Borrower of every environmental provision of this Indenture and every other Loan Document.

12.4 Rights of Beneficiary. In furtherance of the purposes in Paragraph 12.3, without limitation of any of its other rights, Beneficiary may:

(a) Court Order. Obtain a court order to enforce Beneficiary's right to enter and inspect the Property, to which the decision of Beneficiary as to whether there exists a Release, a threatened Release, any Hazardous Substances on or about the Property in violation of any Environmental Law, or a breach by Borrower of any environmental provision of this Indenture or any other Loan Document, will be deemed reasonable and conclusive as between the parties; and

(b) Receiver. Have a receiver appointed to enforce Beneficiary's right to enter and inspect the Property for the purpose set forth above.

12.5 Costs and Expenses. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Borrower to Beneficiary upon demand. All costs or expenses incurred by Trustee and Beneficiary pursuant to this subsection (including without limitation court costs, consultant's fees, and attorneys' fees, whether incurred by outside counsel, in-house counsel, in litigation or otherwise, and whether before or after judgment) shall be secured by the lien of this Indenture and shall bear interest at the After-Maturity Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Borrower or to any other person. Beneficiary will have the right, but not the obligation, to

communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Borrower's obligations under any environmental provision contained in this Indenture or any Loan Document.

12.6 Release and Indemnity. Borrower hereby:

(a) **Release.** Releases and waives any future claims against Beneficiary for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any Environmental Law or under any Hazardous Substance Claim;

(b) **Reimbursement.** Agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Indenture together with interest, after demand, at the After-Maturity Rate; and

(c) **Indemnity.** Agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "Expenses"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Indenture, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Indenture or in any Loan Document or as a consequence of any Release or threatened Release or the presence, use, generation, manufacture, storage, disposal, transportation, Release, or threatened Release of any Hazardous Substance on or about the Property, including the soils and groundwaters, caused or permitted by Borrower, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any Hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Indenture. Borrower's obligations will survive the satisfaction, release, or cancellation of the Secured Debt, the release and reconveyance or partial release and reconveyance of this Indenture, and the foreclosure of the lien of this Indenture or deed in lieu of the Indenture.

12.7 Request for Information. Borrower and Beneficiary agree that:

(a) **Environmental Condition.** This Paragraph 12.7 is intended as Beneficiary's written request for information and Borrower's written response concerning the environmental condition of the Property; and

(b) **Survival of Representations.** Each representation, warranty, covenant, or indemnity made by Borrower in this Paragraph 12 or in any other provision of this Indenture or any Loan Document that relates to the environmental condition of the Property is intended by Borrower and Beneficiary to be an environmental provision and will survive the payment of the Secured Debt and the termination or expiration of this Indenture and will not be affected by Beneficiary's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any transfer of any portion of Borrower's interest in

the Property, any successor-in-interest to Borrower agrees by its succession to that interest that the written request made pursuant to this Paragraph 12.7 will be deemed remade to the successor-in-interest without any further or additional action on the part of Beneficiary and that by assuming the Secured Debt or by accepting the interest of Borrower subject to the lien of this Indenture, the successor remakes each of the representations and warranties in this Indenture and agrees to be bound by each covenant in this Indenture, including, but not limited to, any indemnity provision.

12.8 Effect of Site Assessment. Even though Borrower may have provided Beneficiary with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Borrower acknowledges and agrees that Beneficiary is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather Beneficiary has relied on the representations and warranties of Borrower in this Indenture, and Beneficiary is not waiving any of its rights and remedies in the environmental provisions of this Indenture or any other Loan Document.

13. GENERAL.

13.1 Beneficiary's Right to Waive, Consent or Release. Beneficiary may at any time and from time to time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing, (ii) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing, or (iii) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Beneficiary, except to the extent specifically agreed to by Beneficiary in such writing.

13.2 No Impairment. The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including, without limitation: (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Secured Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Property or any interest therein, or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

13.3 Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Beneficiary, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

13.4 No Usury. Any provision contained in any of the Loan Documents notwithstanding, Beneficiary shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 13.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control.

Borrower's and Beneficiary's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

13.5 Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Beneficiary shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

13.6 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Beneficiary and its successors, substitutes and assigns, and Trustee and its successors and assigns in trust, and shall constitute covenants running with the Land. All references in this Indenture to Borrower, Beneficiary or Trustee shall be deemed to include all such successors, substitutes and assigns. If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Beneficiary may, without notice to the Borrower, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Beneficiary's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

13.7 Severability. A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

13.8 Gender and Construction. Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. In this Indenture (i) the term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note hereby secured, whether or not named as Beneficiary herein; (ii) either of the words "costs" or "expenses" shall include, but shall not be limited to, the cost of title evidence and reasonable fees of the attorneys of choice (both outside and in-house counsel) for Beneficiary or Trustee; (iii) the enumeration of certain particulars as included within general language shall not restrict the scope or affect the generality of such language; and (iv) the term "Borrower" shall mean the original signature(s) hereof, the successors and assigns thereof and any future owners of the Property described herein or any part thereof, subject to the provisions on Prohibited Transfers. When the phrase "in its sole unfettered discretion" is used in the Loan

Documents with respect to Beneficiary, it shall permit Beneficiary to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

13.9 Joint and Several Liability. If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

13.10 Modifications. References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

13.11 Governing Laws. This Indenture shall be construed according to and governed by the Laws of the State.

13.12 Captions. All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

13.13 Acknowledgment of Receipt. Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

13.14 Exhibits. The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

Exhibit A - Property Description

13.15 **Waiver of Jury Trial.** AFTER CONSULTATION WITH COUNSEL AND RECOGNIZING THAT ANY DISPUTE HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS AND TIME INVOLVED IN ANY DISPUTE RESOLUTION PROCESS, EACH OF BENEFICIARY, BY ITS ACCEPTANCE HEREOF, AND THE UNDERSIGNED KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, WHICH IS NOW OR HEREAFTER EXISTING, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS TRANSACTION OR THIS INSTRUMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION WITH THIS TRANSACTION, OR RESPECTING ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY AND ACKNOWLEDGE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ENTERING INTO THIS LOAN TRANSACTION BY ALL PARTIES.

13.16 Time of Essence. Time shall be of the essence with respect to all Borrower's obligations in this Indenture.

13.17 Charges for Statements. Borrower agrees to pay Beneficiary's reasonable charge, to the maximum amount permitted by law, for any statement regarding the obligations secured by this Indenture requested by Borrower or on Borrower's behalf.

13.18 Conflict. The terms of this Indenture, to the degree applicable, shall modify and amend any agreements between the Borrower, its members and managers, and any third parties, or any of them, related to the Encumbered Property. Except as expressly provided for herein, in the event of any conflict between this Indenture and any such other agreement, this Indenture shall control. The Borrower, its members and managers, and guarantors, individually subordinate to Beneficiary's rights under this Indenture and the other Loan Documents any claims, demands, rights or interests they may now or hereafter have in the Encumbered Property except as created herein.

13.19 After-Acquired Title. The conveyance of the Encumbered Property to Trustee and Beneficiary contained herein shall be effective to convey any after-acquired title which the Borrower may obtain in the Encumbered Property.

13.20 Survival. All provisions, covenants and promises of Borrower contained or incorporated herein shall survive foreclosure sale whether or not the full indebtedness has been bid.

13.21 Interpretation. This instrument shall be construed fairly in accordance with its true meaning and not strictly for or against either party hereto. This instrument shall not be construed, nor is it intended, to be for the benefit of any third party hereto. Together with the other Loan Documents, this Indenture sets out the entire agreement of the parties hereto.

14. GENERAL.

14.1 Principles of Construction. Without limiting Section 13.11, to the extent that the laws of the State of Utah govern the interpretation or enforcement of this Indenture, (a) the provisions of this Paragraph 14 shall apply, and (b) in the event of any inconsistencies between the terms and conditions of this Paragraph 14 and the other terms and provisions of this Indenture, the terms and conditions of this Paragraph 14 shall control and be binding.

14.2 Guaranties; Separate Obligations. Anything to the contrary herein or elsewhere notwithstanding, subject to the rights of Beneficiary to proceed on an unsecured basis pursuant to applicable law, no guaranty of any or all of the Obligations which may from time to time be given by any person or entity other than Borrower, nor any obligation arising under any of such guaranties, nor any environmental indemnity given by Borrower, nor any obligation arising under any such environmental indemnity, shall be secured by this Indenture, any separate assignment of leases or assignment of rents, or any other lien encumbering the Property.

14.3 Statute of Frauds. Pursuant to Utah Code § 25-5-4, Borrower is hereby notified that the Note and other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of any alleged prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

14.4 Future Advances. This Indenture is given to secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Beneficiary, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Indenture. The total amount of indebtedness that may be so secured may decrease or increase from time to

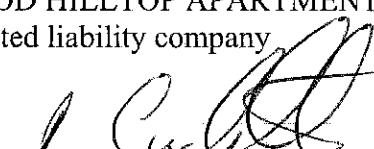
time, but the total unpaid balance so secured at one time shall not exceed \$54,000,000.00, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property, plus interest thereon.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this instrument has been executed by the undersigned as of the Effective Date.

“BORROWER”:

FERNWOOD HILLTOP APARTMENTS, L.C.,
a Utah limited liability company

By: 

Name: Ken R. Crockett
Its: Manager

ACKNOWLEDGMENT

State of Utah)
§
County of)

On this 26th day of Sept, in the year 2022, before me, Theresa Babauta, a notary
public, personally appeared Ken R. Crockett, proved on the basis of satisfactory
evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged
(he/she/they) executed the same.

Witness my hand and official seal.

Theresa Babauta
(notary signature)

(seal)

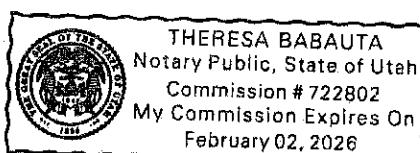


EXHIBIT A**(Legal Description)**

ALL THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SOUTH OGDEN, COUNTY OF WEBER, STATE OF UTAH, AND DESCRIBED AS FOLLOWS:

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY: DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF WASHINGTON BOULEVARD AND THE EXTENSION OF THE SOUTH LINE OF THE EXISTING HILLTOP LANES BUILDING SAID INTERSECTION BEING NORTH 89°08'18" WEST ALONG THE SECTION LINE 800.78 FEET AND NORTH 01°17'42" EAST ALONG SAID EAST LINE 1670.66 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8; THENCE NORTH 01°17'42" EAST ALONG THE SAID LINE 239.34 FEET TO THE SOUTH RIGHT OF WAY LINE OF 4400 SOUTH STREET; THENCE ALONG SAID SOUTH LINE THE FOLLOWING THREE (3) COURSES (1) SOUTH 88°42'18" EAST 55.00 FEET TO A POINT ON A 488.22 FOOT RADIUS CURVE TO THE CENTER OF WHICH BEARS NORTH 01°17'42" EAST (2) NORTHEASTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 36°28'31" A DISTANCE OF 310.81 FEET, AND (3) SOUTH 86°16'32" EAST 91.05 FEET; THENCE SOUTH 13°44'36" EAST 347.31 FEET TO THE EXTENSION OF THE SOUTH LINE OF THE EXISTING HILLTOP LANES BUILDING; THENCE ALONG SAID EXTENSION AND LINE THE FOLLOWING FIVE (5) COURSES: (1) NORTH 88°14'15" WEST 329.80 FEET, (2) SOUTH 01°45'45" WEST 9.39 FEET, (3) NORTH 88°14'15" WEST 71.19 FEET, (4) NORTH 01°45'45" EAST 9.39 FEET AND (5) NORTH 88°14'15" WEST 125.34 FEET TO THE POINT OF BEGINNING.