

RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:

Holland & Knight LLP  
1901 Avenue of the Stars, Suite 1200  
Los Angeles, CA 90067  
Attention: Benjamin Bottehsazan, Esq.

Tax Parcel Numbers: 15-074-0001 & 15-074-0002

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

**COLLATERAL INCLUDES FIXTURES**

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FILING (this "**Security Instrument**") is made as of October 21, 2022, by Hart Utah Apartments LLC, a Delaware limited liability company ("**Trustor**"), whose mailing address is 6 E Germantown Pike, Suite #42, Plymouth Meeting, PA 19462, to Utah First Title Insurance Company ("**Trustee**"), having its mailing address at 592 S. State Street, Orem, UT 84058, for the benefit of The Lafayette Life Insurance Company, an Ohio corporation ("**Lender**"), having its mailing address at 400 Broadway, Cincinnati, Ohio 45202.

**RECITALS**

A. Trustor is indebted to Lender in the principal sum of up to Eighteen Million One Hundred Thousand and No/100 Dollars (\$18,100,000.00) (the "**Loan**"), which indebtedness is evidenced by Trustor's note dated as of the date hereof (the "**Note**"), such principal sum being payable as set forth in the Note with interest at the rate set forth therein, and containing a provision for the payment of a reasonable additional amount as attorneys' fees.

B. Trustor desires to secure to Lender the following (hereinafter referred to as the "**Indebtedness**"): (a) the repayment of the indebtedness evidenced by the Note, with interest thereon as set forth in the Note, and all renewals, increases, extensions and modifications thereof, in whole or in part, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part; (b) the payment of all other sums and future advances, with interest thereon, advanced in accordance herewith to protect the security of this Security Instrument; and (c) the performance of the obligations, covenants and agreements of Trustor contained in the Note, this Security Instrument, and any and all other documents executed now or hereafter in connection with the Note or this Security Instrument for the purpose of further evidencing, securing, governing or guaranteeing the indebtedness secured by this Security Instrument (hereinafter sometimes collectively referred to as the "**Loan Documents**") excluding that certain Indemnity Agreement of even date herewith by Trustor and Thomas A. Leonard, III, ("**Guarantor**"), in favor of Lender.

To secure the payment of the Indebtedness and the performance of the obligations described herein and in the Loan Documents, Trustor does hereby **GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, GRANT A SECURITY INTEREST IN and SET OVER TO** Trustee in trust, with power of sale and right of entry and possession, for the use or for the benefit of Lender, the real property described in **Exhibit "A"** attached hereto and made a part hereof (the "**Land**"), TOGETHER WITH the following, whether now owned or hereafter acquired by Trustor:

(a) all buildings, fixtures and other improvements now or hereafter attached to or placed, erected, constructed or developed on the Land during the existence of this lien (the "**Improvements**");

(b) all "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Commercial Tort Claims", "Deposit Accounts", "Documents", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter of Credit Rights", "Money", "Noncash Proceeds", "Payment Intangibles", "Proceeds", "Software", "Support Obligations", and "Tangible Chattel Paper" as such terms are defined in the Uniform Commercial Code as adopted in the state where the Land is located (the "**UCC**"), , and all renewals of or replacements or substitutions for any of the foregoing whether or not the same shall be attached to the Land or Improvements (collectively, the "**Personal Property**");

(c) all water and water rights, all timber, crops, and mineral interest pertaining to the Land;

(d) all leases, rents, issues, profits, revenues, royalties, bonuses or other benefits of the Land, the Improvements or the Personal Property, including, without limitation, cash or securities deposited pursuant to leases of all or any part of the Land, Improvements or Personal Property to secure performance by the lessees of their obligations thereunder;

(e) all proceeds (including premium refunds) of each policy of insurance relating to the Land, Improvements or Personal Property;

(f) without limitation, all proceeds from the taking of any of the Land, Improvements, Personal Property or any part thereof or any interest or right or estate appurtenant thereto by right of eminent domain or by purchase in lieu thereof;

(g) without limitation, all Trustor's right, title and interest (but not its obligations) in, under and to any and all contracts (including, without limitation, all construction contracts, development agreements, agreements of purchase and sale, engineering contracts, management agreements or other contracts relating to use, management or operation, consulting agreements, architectural agreements and all other contracts or agreements, whether relating to the construction of improvements or otherwise) now or hereafter affecting or relating to all or any portion of the Land, the Improvements or the Personal Property;

(h) without limitation, all deposits, bank accounts, funds, instruments, notes or chattel paper arising from or related to the Land, Improvements or Personal Property;

(i) without limitation, all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Land, Improvements or Personal Property;

(j) all "As-Extracted Collateral" (as such term is defined in the UCC), including timber and oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land or Improvements, and all products processed or obtained therefrom;

(k) all easements and rights-of-way used in connection with the Land or Improvements or as a means of ingress to or egress from said Land or Improvements;

(l) all right, title and interest of Trustor in and to all streets, roads, ways, alleys, public places, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Land or any part thereof;

(m) all proceeds from the sale, lease, or other disposition of all or any portion of the Land, the Improvements or the Personal Property;

(n) all rights, estates, powers, privileges, hereditaments and interests of whatever kind or character appurtenant or incident to the foregoing and all other interests of every kind and character that Trustor now has or at any time hereafter acquires in and to the Land, Improvements, and Personal Property and all property that is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Trustor with respect to such property;

(o) all interest-rate swap agreements, if any, entered into by Trustor in connection with the Loan; and

(p) all products and proceeds of any of the foregoing.

The Land together with the foregoing items (a) through (p) are collectively referred to herein as the "**Mortgaged Property**".

As used in the phrase immediately above, the term "proceeds" shall have the meaning assigned to it under the UCC and, to the extent not otherwise included, shall include, but not be limited to, (a) any and all proceeds of any insurance, causes and rights of action, settlements thereof, judicial and arbitration judgments and awards, and indemnity, warranty or guaranty payments payable to Trustor from time to time with respect to any of the Mortgaged Property, (ii) all claims of Trustor for losses or damages arising out of or related to or for any breach of any agreements, covenants, representations or warranties or any default under any of the Mortgaged Property (without limiting any direct or independent rights of Trustor with respect to the Mortgaged Property), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property. If the estate of Trustor in any of the Mortgaged Property is a leasehold estate, this conveyance shall include and the lien and security interest created hereby shall encumber all additional title, estate, interest, and other rights that may hereafter be acquired by Trustor in the property demised under the leasehold estate.

This conveyance is intended to operate, and is to be construed, as a deed of trust passing the title to all the Mortgaged Property to Trustee, and is made under those provisions of the existing laws of the State of Utah relating to deeds of trust, and not as a mortgage.

If the Trustor shall pay the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, and shall comply with all the covenants, terms and conditions of this Security Instrument, then this conveyance shall be reconveyed or released of record at the request and at the cost of Trustor.

TRUSTOR AGREES TO HAVE AND TO HOLD the Mortgaged Property, with the appurtenances belonging thereto, to the use and benefit of Trustee, its successors and assigns in fee simple forever, upon the trusts and for the uses and purposes herein set out.

1. **SECURED INDEBTEDNESS.** This Security Instrument is made to secure and enforce the payment and performance of the Indebtedness, including future advances, whether such advances are obligatory or to be made at the option of Lender, or otherwise, and whether made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution hereof, when and only when, evidenced by a document executed by Trustor which provides by its terms that such indebtedness is intended to be secured by this Security Instrument. Any provision of this Security Instrument to the contrary notwithstanding this Security Instrument expressly does not secure (i) any guaranty of the loan secured hereby; or (ii) any separate unsecured environmental indemnification agreement executed by Trustor or a third party relating to the Mortgaged Property.

2. **REPRESENTATIONS AND WARRANTIES.** Trustor does hereby represent and warrant to Lender as follows:

2.1. **Title and Authority.** Trustor is the lawful owner of good and indefeasible title to the Land and Improvements and has good right and authority to grant, bargain, sell, convey, transfer, assign and mortgage the Land and Improvements and to grant a security interest in the Personal Property. Trustor does not do business with respect to the Mortgaged Property under any trade name.

2.2. **Permitted Encumbrances.** The Mortgaged Property is free and clear from all liens, security interests and encumbrances except the lien and security interest evidenced hereby and those permitted encumbrances, if any, described in the title policy being issued to Lender insuring the lien of this Security Instrument (hereinafter called the "**Permitted Encumbrances**"). There are no mechanic's or materialmen's liens, lienable bills or other claims constituting or that may constitute a lien on the Mortgaged Property, or any part thereof.

2.3. **No Financing Statement.** There is no financing statement covering all or any part of the Mortgaged Property or its proceeds on file in any public office that has not been terminated or assigned to Lender.

2.4. **Location of Personal Property.** All tangible Personal Property is located on the Land.

2.5. **No Event of Default or Violation.** The execution, delivery and performance of this Security Instrument, the Note and all other Loan Documents do not contravene, result in a breach of or constitute a default under any mortgage, deed of trust, lease, promissory note, loan agreement or other contract or agreement to which Trustor is a party or by which Trustor or any



of its properties may be bound or affected, and do not violate or contravene any law, order, decree, rule or regulation to which Trustor is subject.

**2.6. Compliance with Covenants and Laws.** The Mortgaged Property and the actual and intended use thereof by Trustor comply with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, applicable health and Environmental Laws (as defined herein) and regulations and all other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions, including, without limitation, the Americans With Disabilities Act of 1990, as amended (all of the foregoing hereinafter sometimes collectively referred to as "**Applicable Law**") without reliance upon grandfather provisions or adjacent or other properties. Trustor has obtained all requisite zoning, utility, building, health and operating permits required from the governmental authority or municipality having jurisdiction over the Mortgaged Property. All engineering specifications with respect to the Mortgaged Property are within applicable environmental standards.

**2.7. Condition of Mortgaged Property.**

The Mortgaged Property is served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities and storm drain facilities required for the use thereof as represented by Trustor at or within the boundary lines of the Mortgaged Property.

All streets, alleys and easements necessary to serve the Mortgaged Property for the use represented by Trustor have been completed and are serviceable, and such streets have been dedicated and accepted by applicable governmental entities, if applicable.

The Mortgaged Property is in good condition and repair with no deferred maintenance and is free from damage caused by fire or other casualty, and Trustor is aware of no latent or patent structural or other significant defect or deficiency in the Mortgaged Property.

Design and as-built conditions of the Mortgaged Property are such that no drainage or surface or other water will drain across or rest upon either the Mortgaged Property or land of others except as contemplated by the engineering plans and specifications prepared in connection with the development of the Mortgaged Property and approved by any required governmental authority. None of the Mortgaged Property is within a flood plain or if any of the Mortgaged Property is within the flood plain, Trustor has obtained the flood insurance required by the Lender or by the terms of this Security Instrument.

None of the improvements on the Mortgaged Property create an encroachment over, across or upon any of the Mortgaged Property boundary lines, rights of way or easements and no buildings or other improvements on adjoining land create such an encroachment.

**2.8. ERISA.** Trustor is not ((i) an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code; (iii) an entity whose underlying assets are treated, for purposes of ERISA or Section 4975 of the Internal Revenue Code as assets of any plan subject to ERISA or subject to Section 4975 of the Internal Revenue Code; or (iv) subject to state statutes, regulation investments and fiduciary obligations with respect to "governmental plans" as defined under Section 3(32) of

ERISA. As used herein, "**ERISA**" means the Employee Retirement Income Security Act, Public Law 93-406, as amended.

**2.9. OFAC.** Trustor is not: (i) currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "**List**"), and (ii) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) any person, entity or government subject to trade restrictions under United States law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder (an "**Embargoed Person**").

**2.10. Management Agreement.** Trustor has delivered to Lender a true, correct and complete copy of any Property Management Agreement (the "**Management Agreement**") for the Mortgaged Property or related thereto. Any Management Agreement is unamended and in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**3. Covenants and Agreements.** So long as the Indebtedness or any part thereof remains unpaid, Trustor covenants and agrees with Lender as follows:

**3.1. Payment and Performance.** Trustor will make prompt payment, as the same becomes due, of the Indebtedness and shall punctually and properly perform all of Trustor's covenants, obligations, and liabilities under the Loan Documents.

**3.2. Existence.** Trustor will continuously maintain its existence, its good standing and its right to do business in the State where the Land is located together with its franchises and trade names.

**3.3. Taxes on Note and Other Taxes.** Trustor will promptly pay all income, franchise and other taxes owing by Trustor and any stamp or mortgage taxes that may be required to be paid with respect to the Note, this Security Instrument or any other Loan Documents.

**3.4. Operation of Mortgaged Property.** Trustor will operate the Mortgaged Property in a good and prudent manner and in accordance with all Applicable Laws and will pay all fees or charges of any kind in connection therewith. Trustor will not abandon all or any portion of the Mortgaged Property and will keep the Mortgaged Property occupied so as not to impair the insurance carried thereon. Trustor will not use or occupy, or allow the use or occupancy of, the Mortgaged Property in any manner which violates any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Trustor will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner that would result in such use becoming a nonconforming use under applicable zoning

ordinances or other Applicable Laws. Trustor will not impose any restrictive covenants or encumbrances upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality, without the prior written consent of Lender. Trustor shall not cause or permit any drilling or exploration for, or extraction, removal or production of, minerals from the surface or subsurface of the Mortgaged Property. Trustor will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened. If Trustor receives a notice or claim from any federal, state or other governmental entity pertaining to the Mortgaged Property, including, without limitation, a notice that the Mortgaged Property is not in compliance with any Applicable Law, Trustor will promptly furnish a copy of such notice or claim to Lender.

**3.5. Books and Records.** Trustor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made as to all operations on the Mortgaged Property, and will permit all such books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the improvements forming a part of the Mortgaged Property) to be inspected and copied by Lender and its duly accredited representatives at all times during reasonable business hours.

**3.6. Annual Financial Statements.** Trustor will furnish the Trustor's and Guarantor's "Financial Statements" (as defined below) to the Lender within sixty (60) days after the end of each calendar year and sixty (60) days after the end of each calendar quarter. Such Financial Statements (i) shall be in accordance with GAAP or with sound and prudent tax-based accounting principles consistently applied (or any other method approved in writing by Lender), (ii) shall fairly and accurately present the financial position of Trustor, (iii) shall be certified by Trustor as being true, correct, complete and not misleading in any respect, and (iv) shall be in form acceptable to Lender. "**Financial Statements**" means Trustor's and Guarantor's consolidated and, if required by Lender in its sole and absolute discretion, consolidating, balance sheets, income statements and statements of cash flows for the year, month or quarter together with year-to-date figures and comparative figures for the corresponding periods of the prior year. If required by Lender, Trustor will obtain a Legal Entity Identifier at Trustor's cost, if Lender determines that such LEI may be required by the National Association of Insurance Commissioners or otherwise.

**3.7. Rent Rolls.** Trustor will further deliver to Lender within sixty (60) days after the end of each calendar quarter a current rent roll certified by Trustor showing in-place rents, including concessions and other income items, as applicable, certified by Trustor and in form acceptable to Lender.

**3.8. Debts for Construction.** Trustor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Mortgaged Property, incurred in the construction, maintenance, operation and development of the Mortgaged Property to be promptly paid.

**3.9. Ad Valorem Taxes.** Trustor will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Mortgaged Property, or any part thereof, or against Trustee or Lender for or on account of the Note or any other Indebtedness

or the interest created by this Security Instrument and will furnish Lender with receipts showing payment of such taxes and assessments at least ten (10) days prior to the applicable due date therefor; provided that Trustor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Trustor shall not be deemed in default hereunder if (a) Trustor shall diligently prosecute such contest in a manner not prejudicial to the rights, liens and security interests of Lender; (b) prior to delinquency of the asserted tax or assessment Trustor establishes with Lender an escrow acceptable to Lender adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Trustor upon payment of all such taxes, assessments, interest, costs and penalties or disbursed in accordance with the resolution of the contest to the claimant) or furnishes Lender with an indemnity bond or other security acceptable to Lender, in the amount of the tax or assessment being contested by Trustor plus a reasonable additional sum to pay all costs, interests and penalties which may be imposed or incurred in connection therewith; (c) Trustor pays to Lender promptly after demand therefor all costs and expenses incurred by Lender in connection with such contest; and (d) Trustor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final and unappealable; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Mortgaged Property may be sold.

**3.10. Repair and Maintenance.** Trustor will keep the Mortgaged Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Mortgaged Property to be misused, abused or wasted or to deteriorate. Trustor will promptly replace all worn-out or obsolete fixtures or personal property covered by this Security Instrument with fixtures or personal property comparable to the replaced fixtures or personal property when new, and will repaint the Mortgaged Property when needed. Trustor will make all renovations, modifications and alterations to the Mortgaged Property in compliance with all Applicable Laws. Notwithstanding any of the foregoing, Trustor will not, without the prior written consent of Lender, (a) remove from the Mortgaged Property any fixtures or personal property covered by this Security Instrument except such as is replaced by Trustor by an article of equal suitability and value, owned by Trustor, free and clear of any lien or security interest (except that created by this Security Instrument); (b) make any structural alteration to the Mortgaged Property or any other alterations thereto which impair the value thereof; or (c) make any alteration to the Mortgaged Property involving an estimated expenditure exceeding \$50,000.00; except pursuant to plans and specifications approved in writing by Lender in its sole and absolute discretion. Upon request of Lender, Trustor will promptly deliver to Lender an inventory describing and showing the make, model, serial number and location of all fixtures and personal property used in the management, maintenance and operation of the Mortgaged Property with a certification by Trustor that said inventory is a true and complete schedule of all such fixtures and personal property used in the management, maintenance and operation of the Mortgaged Property, that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Mortgaged Property, and that all such items are owned by Trustor free and clear of any lien or security interest (except that created by this Security Instrument).



**3.11. Insurance.** For the benefit of Trustor and Lender and as further security for the payment of the Indebtedness, Trustor shall obtain and keep in force at all times, or cause to be obtained and kept in force, the following policies of insurance: (a) "special causes of loss" or "all risk" property insurance, insuring Improvements now existing or hereafter erected on the Land against loss or damage caused by fire, lightning, windstorm, tornado, hurricane, hail, explosion, vandalism, earthquake, malicious mischief, terrorism, mold (if commercially available), sprinkler and such other casualties and hazards as are covered by such insurance, for not less than their full insurable value, with a full replacement cost endorsement; (b) boiler and machinery insurance, if applicable; (c) flood insurance, if any portion of the Mortgaged Property is located in a flood risk area as designated by the United States Department of Housing and Urban Development, in the maximum amount available for the Mortgaged Property; (d) commercial general liability insurance coverage with a minimum combined single limit of at least \$10,000,000 per occurrence; (e) rent loss insurance coverage in a minimum amount of not less than twelve (12) months gross pro forma rental income receivable from the Mortgaged Property; (f) if the Trustor has employees, workers' compensation insurance as may be required by Applicable Law; and (g) such other insurance, including without limitation, windstorm insurance, and earthquake insurance in such form and in such amounts as may from time to time reasonably be required by Lender.

Insurance shall be written by a company or companies approved by Lender, which shall have a current Best's rating of at least "A-" and a financial rating of VIII or better. If the insurer is a holding company issuing insurance through one of its subsidiaries, the subsidiary must have its own acceptable Best's rating or a rating assigned to a pool of which the issuing company is a member. Trustor shall be shown as the insured, unless a tenant is providing insurance coverage, in which case Trustor may be shown as an "additional insured" or an "additional named insured" and Lender shall be shown as an "additional insured". No lien upon any of such policies of insurance or upon any refund or return of premium that may be payable on the cancellation or termination thereof shall be given other than to Lender, except by proper endorsement affixed to such policy and approved by Lender.

Trustor shall deliver to Lender an original or certified copy of all property insurance policies and a certificate of insurance for all other policies. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include (a) a clause that the policy will not be cancelled or terminated, except upon thirty (30) days' advance, written notice to Lender, and (b) a noncontributory standard mortgagee clause in favor of and in form acceptable to Lender, and (c) for property insurance, deductibles may not exceed \$25,000. Trustor shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Trustor shall deliver to Lender a renewal policy or certified copy thereof in form satisfactory to Lender.

In the event of loss, Trustor shall give immediate written notice to the insurance carrier and to Lender. Trustor hereby authorizes and empowers Lender for Trustor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds, provided, however, that nothing contained in this Section shall require Lender to incur any expense or take any action hereunder. Trustor further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Trustor for the cost of reconstruction or repair of the



Mortgaged Property, or (b) to apply the balance of such proceeds to the payment of the sums secured by this Security Instrument, whether or not then due, in the order of application set forth in the Note.

If the insurance proceeds are held by Lender to reimburse Trustor for the cost of restoration and repair of the Mortgaged Property, the Mortgaged Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and material suppliers and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may require. If the insurance proceeds are applied to the payment of the sums secured by this Security Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments required by the terms of the Note or change the amounts of such installments. If the Mortgaged Property is sold pursuant to Section 9 hereof or if Lender acquires title to the Mortgaged Property, Lender shall have all of the right, title and interest of Trustor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

Notwithstanding the foregoing and the terms of this Section or Section 3.12 below, Lender will make insurance proceeds, proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property available to Trustor for the restoration of the Mortgaged Property provided that (i) no Event of Default (and no other event or condition that, with the passage of time or giving of notice, would constitute an Event of Default) has occurred and is continuing, (ii) funds sufficient to complete the repair and/or restoration of the Mortgaged Property are available to Trustor from such proceeds, or from funds of Trustor (Trustor agreeing to deposit with Lender, in cash, the difference between the cost of restoration and the amount of such proceeds available therefor) or both, as determined by Lender; (iii) restoration is commenced promptly following the date of such damage or destruction; (iv) Lender is provided evidence satisfactory to Lender in its sole and absolute discretion that such restoration will be completed within six (6) months of the date of such damage, destruction, condemnation or sale with respect to a condemnation and that in the case of a condemnation or sale in connection with a condemnation, the Mortgaged Property will not be substantially impaired or diminished so as to materially impair the value thereof; and (v) prior to the disbursement for such restoration, Lender is provided assurances, satisfactory to Lender in its sole and absolute discretion, that upon completion of restoration, tenants will lease space within the Mortgaged Property at equal or better rents than were contemplated prior to the condemnation, sale in connection with a condemnation, damage or destruction, as applicable.

**3.12. Condemnation.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, or any other proceedings arising out of injury or damage to the Mortgaged Property, or any portion thereof, Trustor will notify Lender of the pendency of such proceedings. Lender may participate in any such proceedings, and Trustor shall from time to time deliver to Lender all instruments requested by it to permit such participation. Trustor shall, at its expense, diligently prosecute any such

proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be paid to Lender and shall be applied, first, to reimburse Lender or Trustee for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with the collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the sole discretion of Lender, to the payment of the Indebtedness (without premium or penalty) in the order determined by Lender in its sole discretion or paid out to repair or restore the Mortgaged Property so affected by such condemnation, injury or damage in the same manner as provided in Section 3.11. In any event the unpaid portion of the Indebtedness shall remain in full force and effect and Trustor shall not be excused in the payment thereof. In the event any of the foregoing proceeds are applied to the repair, restoration or replacement of the Mortgaged Property, Trustor shall promptly commence and complete such repair, restoration or replacement of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or taking in accordance with plans and specifications submitted to and approved by Lender. Trustor hereby assigns and transfers all such proceeds, judgments, decrees and awards to Lender and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Lender may request. Lender is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree, or award. Lender shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

**3.13. Protection and Defense of Lien.** Trustor shall not permit the Mortgaged Property or any part thereof to be taken by execution or other process of law. If the validity or priority of this Security Instrument or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Mortgaged Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Trustor with respect thereto, Trustor will give prompt written notice thereof to Lender and at Trustor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including, without limitation, the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Trustee and Lender, or either of them (whether or not named as parties to legal proceedings with respect thereto) are hereby authorized and empowered to take such additional steps as in their judgment and sole and absolute discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Security Instrument and the rights, titles, liens and security interests created or evidenced hereby, including, without limitation, the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Mortgaged Property, the purchase of any tax title and the removal of prior liens or security interests (including, without limitation, the payment of debts as they mature or the payment in full of matured or unmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be subject to and covered by the provisions of Section 4.2 hereof.

**3.14. No Other Liens.** Trustor will not create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of

trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Mortgaged Property that are not delinquent, but excluding any encumbrance created under a state or federal Property Assessed Clean Energy (PACE) loan or other encumbrance whether designated as a tax, an assessment or a lien), security interest, encumbrance or charge, or conditional sale or other title retention document (each, an "**Encumbrance**"), against or covering the Mortgaged Property, or any part thereof, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Security Instrument. If there is filed an affidavit claiming a mechanic's or materialman's lien against the Mortgaged Property, such affidavit shall not be deemed an Encumbrance provided that Trustor causes the lien to be removed within thirty (30) days or provides a bond or other security satisfactory to Lender, in its sole and absolute discretion, to protect its interest as Lender. Trustor will own all parts of the Mortgaged Property and will not acquire any fixtures, equipment or other property forming a part of the Mortgaged Property pursuant to a lease, license or similar agreement without the prior written consent of Lender, in its sole and absolute discretion.

**3.15. Escrow.** Trustor shall pay to Lender, on the day monthly installments of principal and/or interest are payable under the Note (or on another day designated in writing by Lender) and until the Note is paid in full, a sum (herein "**Funds**") equal to one-twelfth of (a) the yearly taxes and assessments that may be levied on the Mortgaged Property, and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Mortgaged Property as Lender may require pursuant to Section 3.11 of this Security Instrument, all as reasonably estimated initially and from time to time by Lender so that Lender may pay the items identified in (a) and (b) above at least thirty (30) days prior to their respective due dates.

On the date the Loan is funded, an account shall be established by Lender for the deposit of the Funds in an amount equal to the next assessment or levy of real estate and/or property taxes and insurance premiums on the Mortgaged Property minus the monthly Fund installments remaining before such assessment, levy, or premium installment is due. Thereafter, Funds shall be deposited in said account as provided above. The account may be commingled with Lender's other accounts or held by Lender's servicer.

When an Event of Default has occurred and remains uncured, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole and absolute discretion, any Funds held by Lender at the time of application (a) to pay taxes, assessments and insurance premiums that are now or will hereafter become due or (b) as a credit against sums secured by this Security Instrument. Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Trustor any Funds held by Lender.

Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills. Lender shall not be required to pay Trustor any interest, earnings or profits on the Funds. The Funds are pledged, free and clear of any creditor liens, and a security interest is hereby granted to Lender therein, as additional security for the sums secured by this Security Instrument and shall be subject to the right of set-off.

If the amount of the Funds held by Lender shall exceed the amount deemed necessary by Lender to provide for the payment of taxes, assessments and insurance premiums thirty (30) days prior to the date when they become due and payable, such excess shall be credited to Trustor on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay taxes, assessments and insurance premiums, Trustor shall pay to Lender any amount necessary to make up the deficiency within fifteen (15) days after notice from Lender to Trustor requesting payment thereof and at least thirty (30) days prior to the date when they become due and payable.

The conveyance or transfer of Trustor's interest in the Mortgaged Property for any reason (including, without limitation, the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Trustor's interest in and rights to the Funds held by Lender under this Section, but subject to the rights of Lender hereunder. Lender may waive in a separate writing the escrow provisions of this Section upon such terms and conditions as it shall require.

Notwithstanding anything to the contrary in this Section 3.15, upon written request by Trustor following receipt of written notice of Lender's release of that certain Stabilization Guaranty of even date herewith by Guarantor in favor of Lender, Lender agrees to waive the provisions of this Section 3.15 provided that no Event of Default exists and no event or condition exists that, with the passage of time or the giving of notice, would constitute an Event of Default and provided Borrower provides Lender with evidence satisfactory to Lender that the real estate taxes and insurance premiums are paid in a timely fashion.

**3.16. Further Assurances.** Trustor will, on request of Lender, promptly (a) correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in any other instrument now or hereafter executed in connection herewith or in the execution of acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including, without limitation, any financing statement) deemed advisable by Lender to protect the lien or the security interest hereunder against the rights or interests of third persons; and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Lender to enable Lender to comply with the requirements or requests of any agency having jurisdiction over Lender or any examiners of such agencies with respect to the Indebtedness, Trustor or the Mortgaged Property and Trustor will pay all costs connected with any of the foregoing.

**3.17. Title Insurance.** Trustor shall, at its sole cost and expense obtain and maintain title insurance in the form of a commitment, binder or policy (collectively, "**Policy**") as Lender may require, issued by a title company acceptable to Lender. If for any reason during the period



the Indebtedness is outstanding such title insurance is no longer valid or the issuing title company is insolvent or unable to adequately insure the validity and priority of the lien evidenced by this Security Instrument (as determined by Lender in its sole and absolute discretion), Trustor agrees to obtain, at its sole cost and expense, a replacement Policy issued by a title company acceptable to Lender in favor of Lender as Lender, in such amount and form as required by Lender, insuring the validity and priority of the lien evidenced by this Security Instrument.

**3.18. Fees and Expenses; Indemnification.** Trustor will pay all appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search and/or filing fees, escrow fees, reasonable attorneys' fees, and all other costs and expenses of every character incurred by Trustor or Lender in connection with the Indebtedness, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Trustor as owner of the Mortgaged Property, and will reimburse Lender for all such costs and expenses incurred by Lender. Trustor shall pay all expenses and reimburse Lender for any expenditures, including, without limitation, reasonable attorneys' fees and legal expenses, incurred or expended in connection with (a) the breach by Trustor of any covenant herein or in any other Loan Document; (b) Lender's exercise of any of its rights and remedies hereunder or under the Note or any other Loan Document or Lender's protection of the Mortgaged Property and its lien and security interest therein; or (c) any amendments to this Security Instrument, the Note or any other Loan Document or any matter requested by Trustor or any approval required hereunder. **Trustor will indemnify and hold harmless Trustee and Lender (for purposes of this Section, the term(s) "Trustee" and "Lender" shall include the directors, officers, partners, employees, representatives and agents of Trustee and Lender, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Trustee and Lender, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) that may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or with this Security Instrument, the Note or any other Loan Documents and occurring or arising prior to the date Trustor obtained title to the Mortgaged Property or during the time that Trustor held title to the Mortgaged Property. In no event will Trustor be liable to Trustee or Lender under this Section for matters arising from any cause whatsoever that occurs after the date Trustor transfers fee title to the Mortgaged Property in a manner permitted under the terms of the Loan Documents or in connection with the payment in full of the Note. To the extent that any liability under this Section relates to a matter that occurs prior to the date Trustor transfers fee title to the Mortgaged Property in a manner permitted under the terms of the Loan Documents or in connection with the payment in full of the Note, but the existence of such matter is not evident until after the date of such transfer, Trustor will remain liable under this Section. Without limitation of the foregoing, it is the intention of Trustor and Trustor agrees that the foregoing indemnities shall apply to each indemnified party with respect to claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees), which in whole**



or in part are caused by or arise out of the negligence of such (and/or any other) indemnified party. However, such indemnities shall not apply to any indemnified party to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such indemnified party. The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Security Instrument but will survive foreclosure of this Security Instrument or conveyance in lieu of foreclosure and the repayment of the Indebtedness and the discharge and release of this Security Instrument and the other Loan Documents. Any amount to be paid hereunder by Trustor to Lender and/or Trustee shall be subject to and governed by the provisions of Section 4.2 hereof.

**3.19. Warranty.** Trustor will warrant and forever defend the title to the Mortgaged Property against the claims of all persons whomsoever claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

**3.20. Tax on Lien.** In the event of the enactment after this date of any Applicable Law deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of Lender or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Security Instrument or the Indebtedness or Lender, then, and in any such event, Trustor upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Trustor to make such payment; or (b) the making of such payment might result in the contracting for, charging or receiving of interest beyond the maximum amount permitted by law, then and in such event, Lender may elect, by notice in writing given to Trustor, to declare all of the Indebtedness to be and become due and payable 120 days from the giving of such notice.

**3.21. Change of Name.** Trustor will not change Trustor's name, identity (including its trade name or names) or, if not an individual, Trustor's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change. Trustor will execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Trustor shall execute a certificate in form satisfactory to Lender listing the trade names under which Trustor intends to operate the Mortgaged Property, and representing and warranting that Trustor does business under no other trade name with respect to the Mortgaged Property.

**3.22. Location and Use of Personal Property.** All the Personal Property will be used in the business of Trustor and shall remain in Trustor's possession or control at all times at Trustor's risk of loss and shall be located on the Land.

**3.23. Estoppel Certificate.** Trustor shall at any time and from time to time furnish promptly upon request by Lender a written statement in such form as may be required by Lender stating that the Note, this Security Instrument and the other Loan Documents are valid and binding

obligations of Trustor, enforceable against Trustor in accordance with their terms; the unpaid principal balance of the Note; the date to which interest on the Note is paid; that the Note, this Security Instrument and the other Loan Documents have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Note, this Security Instrument or any other Loan Documents, or if any of the foregoing statements are untrue, specifying the reasons therefor.

**3.24. Proceeds of Personal Property.** Trustor shall account fully and faithfully for and, if Lender so elects, shall promptly pay or turn over to Lender the proceeds in whatever form received from disposition in any manner of any of the Personal Property, except as otherwise specifically authorized herein. Trustor shall at all times keep the Personal Property, and its proceeds separate and distinct from other property of Trustor and shall keep accurate and complete records of the Personal Property and its proceeds.

**3.25. Permitted Encumbrances.** Trustor will comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Mortgaged Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Trustor will not modify or permit any modification of any Permitted Encumbrance, without the prior written consent of Lender.

**3.26. ERISA.** Trustor will not engage in any transaction that would be a non-exempt prohibited transaction under ERISA or Section 4975 of the Internal Revenue Code. Trustor shall not maintain, sponsor, contribute to or have any liability or potential liability with respect to any "multi-employer plan" as defined in Section 3(37) of ERISA or any "defined benefit plan" as defined in Section 3(35) of ERISA, which is subject to Title IV of ERISA.

**3.27. Single Purpose Entity.** Trustor will be a Single Purpose Entity at all times until the Loan has been paid in full. With respect to Trustor, a "**Single Purpose Entity**" means a corporation, limited partnership or limited liability company which, at all times since its formation and thereafter: (a) has not and will not engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto; (b) has not and will not acquire or own any assets other than the Mortgaged Property; (c) has not and will not merge or consolidate with any other entity or person; (d) has not and will not own any subsidiary or make any investment in, any other entity or person; (e) has not and will not commingle its assets with the assets of any other entity or person; (f) has not and will not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Loan and customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property and other than other liens in favor of Lender; (g) has and will maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other entity or person; (h) has not and will not maintain its assets in a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity or person; (i) has not and will not assume or guaranty the debts of any other entity or person, hold itself out to be responsible for the debts of another entity or person, otherwise pledge its assets for the benefit of any other entity or person, or hold out its credit as being available to satisfy the obligations of any other entity or person; (j) has not and will not make any loans or advances to any other entity or person; (k) except to the extent it is a disregarded entity for tax purposes, has and will file its own tax

returns as required under federal and state law; (l) has and will hold itself out to the public as a legal entity separate and distinct from any other entity or person and conduct its business solely in its own name and will correct any known misunderstanding regarding its separate identity; and (m) has and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

**3.28. Transfers Of The Mortgaged Property Or Beneficial Interests In Trustor.**

(a) The present ownership and management of the Mortgaged Property is a material consideration to Lender in making the Loan secured by this Security Instrument. Without the prior written consent of Lender, in its sole and absolute discretion, neither the Mortgaged Property nor any interest therein shall be sold, conveyed, alienated, pledged, mortgaged or encumbered, in whole or in part, or contract to do the same be entered into, nor shall Trustor be divested of its title or any interest therein in any manner or way, whether voluntary or involuntary (whether direct or indirect, legal or equitable, including the sale, assignment, transfer, disposition, conveyance, alienation, pledge, or encumbrance of any ownership interest in Trustor or in any entity having an ownership interest in Trustor, whether direct or indirect (any such event a "transfer"). Trustor further agrees that no merger, consolidation, or dissolution affecting Trustor nor any division of Trustor into any two or more separate entities (nor any allocation of Trustor's assets, rights or obligations to any other entities) shall occur without the prior written consent of Lender, in its sole and absolute discretion. Upon the occurrence of a default under this paragraph, in addition to all other rights and remedies of Lender, Lender may, at Lender's option, declare all of the sums secured by this Security Instrument to be immediately due and payable and Lender may invoke any remedies permitted by Section 9 of this Security Instrument or otherwise available under the other Loan Documents or under Applicable Law.

(b) Notwithstanding the foregoing provisions of this Section 3.28, Trustor shall have a one-time right, while the Indebtedness remains unpaid, to sell or transfer its entire ownership interest in the Mortgaged Property, without any changes to the terms and conditions of the Loan Documents, provided that: (i) the transferee ("Transferee") and its principals are acceptable to Lender in its sole and absolute discretion in terms of financial strength, creditworthiness, and, at the time of the transfer of the Mortgaged Property, Transferee and its principals have a net worth (exclusive of the Mortgaged Property) exceeding fifty percent (50%) of the existing Loan balance (including accrued but unpaid interest); (ii) the Transferee (or its principals) has had at least five (5) years of experience owning and/or managing properties similar to the Mortgaged Property; (iii) the Transferee agrees to assume all of the duties and obligations of Trustor under the Loan Documents pursuant to documentation satisfactory to Lender in its sole and absolute discretion; (iv) each person or entity with a 20% or more direct or indirect interest in Trustor or that, directly or indirectly, controls Trustor will execute guaranties and indemnities as required by Lender in form of current guaranties and indemnities; (v) the Transferee and Trustor agree to execute and deliver to Lender such documents regarding the transfer and assumption as Lender may require, including, but not limited to, a recordable assumption agreement and Lender is provided endorsements to Lender's title insurance policy acceptable to Lender; (vi) an assumption fee equal to one percent (1%) of the outstanding principal balance of the Loan is paid to Lender prior to such transfer; (vii) neither an Event of Default nor any event or condition that, with the passage of time or giving of notice, would constitute an Event of Default has occurred and is continuing at the time of the transfer; (viii) all costs relating to the transfer are paid by

Trustor or the Transferee (including attorneys' fees and costs); (ix) Lender is provided with all documents required by Lender to consider the transfer, and prior written notice of the proposed transfer, at least thirty (30) days before such proposed transfer; and (x) Lender receives written confirmation from any guarantor of the Indebtedness (whether one or more, the "**Guarantor**") prior to the transfer that all guarantees executed in connection with the Loan remain unmodified and in full force and effect after such transfer solely for the period of ownership of the Mortgaged Property prior to the transfer. No subsequent transfers of the Mortgaged Property shall be allowed. If the proposed transfer does not occur for any reason, Trustor shall nevertheless be responsible for reimbursing Lender for its out-of-pocket expenses in connection with the proposed transfer (including reasonable attorneys' fees and costs).

(c) In addition, the following listed transfers of ownership interests in Trustor (but not transfers of the Mortgaged Property) shall be permitted provided that: (i) Lender is given at least thirty (30) days prior written notice promptly of any such transfer; (ii) Trustor and the Transferee agree to execute and deliver to Lender such documents regarding the transfer as required by Lender; (iii) Trustor is not then in default under the terms and conditions of the Loan; (iv) Trustor and/or the Transferee pay all costs and expenses related to such transfer; (v) Trustor pays Lender a processing fee (to be determined by Lender at the time of each transfer) of not less than One Thousand Dollars (\$1,000) for each such transfer; and (vi) Lender receives written confirmation from the Guarantor that any guarantees executed in connection with the Loan remain unmodified and in full force and effect after such transfer (solely for the period of ownership prior to such transfer, if Guarantor is being released in connection with the transfer):

- (i) Transfers of ownership interests in Trustor between existing Principals;
- (ii) transfers of ownership interests in Trustor from an existing Principal of Trustor to the children, grandchildren, spouse, brothers or sisters of such transferring Principal (or to trusts for the benefit of such person) (each, a "**Family Transferee**"); and
- (iii) transfers of ownership interests in Trustor that occur as the result of the death of a Principal of Trustor. As used herein, "**Principal**" shall mean, individually and collectively, LFA Q OP Zone LLC and Hart-QOZ Fund, LLC.
- (iv) Transfers of ownership interests in Trustor that do not result in a change of control of the Trustor, whether direct or indirect (and in all events subject to anti-money laundering and OFAC checks, as required by law). For purposes of this clause (iv), a "change of control" shall mean any transfer of interests currently held by the Trustor's ultimate parent entity whereby such ultimate parent entities no longer have effective control of major decisions.

(d) **Subordinate Financing.**

(i) If at any time Trustor receives from a third party an offer, term sheet or commitment or makes a proposal accepted by any third person or entity (each, an "**Offer**") that



provides for any type of junior financing (the "**Junior Financing**") to be secured by all or any part of the Property or the other Property that Trustor desires to accept, Trustor shall notify Lender of the Offer in writing and shall provide a copy of the Offer to Lender. Lender shall have 45 days after its receipt of such notice and a copy of the Offer (the "**Option Period**") to agree to provide substantially the same financing on identical or better economic terms and conditions, as in the Offer. Lender shall notify Trustor in writing of Lender's acceptance of the Offer (the "**Acceptance Notice**"), in which case Trustor shall obtain such financing from Lender and shall not accept the Offer from such other third person or entity. In no event shall the Trustor's closing on Junior Financing under either the Offer or the Acceptance Notice be a violation of, breach of, or Event of Default under the Security Agreement, including, without limitation, this Section 3.28 provided that all terms and conditions hereof are satisfied, including under Section 3.28(d)(ii). No failure by Lender to issue an Acceptance Notice shall be construed as a waiver of any of the terms, covenants or conditions of any of the Loan Documents.

(ii) If no Acceptance Notice has been received from Lender within the Option Period, Trustor has a one-time right to consummate the Offer for the Junior Financing with the other third person or entity on the terms and conditions set forth in the Offer, but only if all of the following other terms and conditions are satisfied:

(A) No Event of Default exists, and no event or condition exists that, with the passage of time or giving of notice, would constitute an Event of Default;

(B) The Junior Financing is closed and fully funded between the date that is one year from the date hereof and six (6) years from the date hereof;

(C) The amount of the Junior Financing shall be at least \$1,000,000 but not in excess of \$10,000,000;

(D) The Junior Financing is consummated on the terms set forth in the Offer or with the third person or entity providing the Offer during the 75-day period following the expiration of the Option Period;

(E) The lender for the Junior Financing is a lender that regularly makes comparable loans and is acceptable to Lender in Lender's reasonable discretion;

(F) The lender for the Junior Financing executes subordination and standstill agreements each in form and substance as required by Lender, and without limitation such agreements shall provide for junior lender subordinating its rights (including lien rights) to the Loan and that certain Second Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (Bel Canto) of even date herewith, by Trustor in favor of Lender, and each such subordination and standstill agreement shall contain such other terms as are required by Lender (including standstill of remedies and no right to receive payments under the Junior Financing while an Event of Default exists);

(G) Lender determines that the Debt Service Coverage Ratio for the prior six months is no less than 1.35;



(H) The maturity date of the Junior Financing is concurrently with the maturity date under the Loan;

(I) Intentionally Omitted;

(J) The full amount of the Loan and the full amount of the Junior Financing does not exceed 68% of the AS-IS value of the Property as determined by Lender (and Lender may require that Trustor provide for an appraisal, at Trustor's sole cost and expense from an appraiser designated by Lender to assist Lender in making this determination);

(K) Lender shall be reimbursed for all fees and costs incurred in connection with the Junior Financing (including attorneys' fees and costs, and, for the avoidance of doubt, shall be reimbursed for all fees and costs regardless as to whether the Junior Financing is approved or closes); and

(L) Lender shall receive a processing fee equal to the greater of 1.00% of the maximum amount of the Junior Financing (regardless as to the actual amount advanced) or \$10,000.

(iii) As used in Section 3.28(d)(ii), the following terms are defined as follows:

(A) **"Debt Service"** shall mean, with respect to any particular period of time, principal and interest payments that would be payable under (a) the Note based on a thirty-year amortization (regardless of actual amounts payable) and (b) any Junior Financing that would have been paid during such period (based on the greater of actual principal and interest payments or debt service that would have been payable based on a 30-year amortization if the Junior Financing was fully funded at the beginning of such period).

(B) **"Debt Service Coverage Ratio"** shall mean, as of any date, the ratio calculated by Lender of (i) the Net Operating Income for the applicable period ending with the most recently completed calendar month to (ii) the Debt Service with respect to such period.

(C) **"Gross Income from Operations"** shall mean, for any period, all ordinary income, computed in accordance with GAAP, derived from the ownership and operation of the Property from tenants, but excluding (i) sales, use and occupancy or other taxes on receipts required to be accounted for by Trustor to any governmental authority, (ii) refunds and uncollectible accounts, (iii) proceeds from the sale of furniture, fixtures and equipment, (iv) insurance proceeds and condemnation proceeds, (v) any disbursements to Trustor from any reserves under the Loan or the Junior Financing (or any other proceeds of the Loan or the Junior Financing), (vi) security deposits (including forfeited security deposits), (vii) interest (if any) on credit accounts, (viii) service fees or charges, (ix) license fees, (x) parking fees, or (xi) rent concessions or credits.

(D) **"Net Operating Income"** shall mean for any particular period the amount of Gross Income from Operations for such period less Operating Expenses for such Period.

(E) **"Operating Expenses"** shall mean, for any period the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, ownership, leasing, maintenance and management of the Property, including without limitation, utilities, repairs and maintenance, insurance, license fees, taxes and advertising expenses, management fees (in an amount equal to the greater of actual management fees or 4% of gross revenue), payroll and related taxes, computer processing charges, tenant improvements and leasing commissions, operational equipment or other lease payments, and other similar costs, and plus an expense reserve in an amount equal to \$0.20 per foot of storage space and plus a capital reserve in an amount reasonably estimated by Lender as being necessary or prudent, but excluding depreciation, debt service, and capital expenditures.

**3.29. OFAC.** Trustor shall not at any time be designated on any List or be an Embargoed Person. Trustor will notify Lender immediately if it is designated on any List or becomes an Embargoed Person.

**3.30. Property Management Agreement.** Trustor shall not modify, amend or terminate any Management Agreement or waive any rights thereunder without the prior written consent of Lender.

#### **4. RIGHTS OF LENDER.**

**4.1. Right of Lender to Inspect.** Lender shall have the right to inspect the physical condition of the Mortgaged Property and to inspect and copy the books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the Improvements) of Trustor that relate to the Mortgaged Property or the Indebtedness at any time while the Indebtedness remains unpaid, upon reasonable notice during normal business hours. Trustor will allow Lender or its authorized representative to enter the Mortgaged Property to complete such inspection, and Trustor will assist Lender or its representative in whatever way reasonably necessary to make such inspection. Lender may charge \$500 for a physical inspection of the Mortgaged Property (and, if an Event of Default exists, any out-of-pocket costs incurred), but no more often than once every two (2) years commencing on the Closing Date. Trustor will be obligated to pay said fee within ten (10) business days after billing for such inspection.

**4.2. Right of Lender to Perform; Lender Expenses.** Trustor agrees that, if Trustor fails to perform any act or to take any action which hereunder Trustor is required to perform or take, or to pay any money which hereunder Trustor is required to pay, or takes any action prohibited hereby, Lender, in Trustor's name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action, including, without limitation, entering the Mortgaged Property for such purpose and to take all such action thereon as it may deem necessary or appropriate, or pay such money or remedy any action so taken, and any expenses so incurred by Lender, and any money paid by Lender in connection therewith, shall be a demand obligation owing by Trustor to Lender and Lender, upon making such payment, shall be subrogated to all of the rights of the party receiving such payment. Any amounts due and owing by Trustor to Lender pursuant to this Security Instrument shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of

or interest on the Note and shall be a part of the Indebtedness and shall be secured by this Security Instrument and by any other Loan Documents.

**5. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND COVENANTS; EASEMENT AND LICENSE.**

**5.1. Representations, Warranties, and Covenants.** Reference is made to that certain Indemnity Agreement executed in connection with the Mortgaged Property of even date herewith for Trustor's representations, warranties and covenants regarding Hazardous Materials and environmental matters. Capitalized terms used in this Section shall have the meanings given them in the Indemnity Agreement.

**5.2. Easement and License.** In addition to other inspection rights of Lender, Trustor shall and hereby does grant and convey to Lender, its agents, representatives, contractors, and employees, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing, as Lender, in its sole discretion, deems necessary, convenient, or proper to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with the terms and conditions set forth in the Loan Documents, and specifically with the terms and conditions of the Agreement. Any tests or inspections made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person or entity. Lender shall have no obligation to perform any such audits, tests, inspections, or examinations, or to take any remedial action. All the costs and expenses incurred by Lender with respect to any audits, tests, inspections, examinations, and interviews which Lender may conduct or take pursuant to this Section, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Trustor, with interest, and shall be secured by the Security Instrument and the other Loan Documents.

**6. ASSIGNMENT OF RENTS, LEASES, PROFITS, INCOME, CONTRACTS AND BONDS.**

**6.1. Assignment of Rents.** As part of the consideration for the Indebtedness, Trustor hereby absolutely and unconditionally assigns and transfers to Lender all the rents, issues, profits and revenues (including all security deposits) of the Mortgaged Property, whether now due, past due, or to become due pursuant to any lease, license or other agreement for the occupancy or use of all or any part of the Mortgaged Property, regardless of to whom the rents, issues, income, profits and revenues of the Mortgaged Property are payable (the "**Rents**"). Trustor hereby authorizes Lender or Lender's agents to collect the Rents, and hereby directs each tenant of the Mortgaged Property to pay the Rents to Lender or Lender's agents; provided, however, that prior to the occurrence of an Event of Default, Trustor shall collect and receive all Rents as trustee for the benefit of Lender and Trustor shall apply the collected Rents to the sums secured by this Security Instrument in the order provided in the Note with the balance to the account of Trustor. Trustor and Lender intend that this assignment of the Rents constitutes an absolute assignment and not an assignment for additional security only. Upon the occurrence of an Event of Default and without the necessity of Lender entering upon and taking and maintaining full control of the

Mortgaged Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents and shall have paid over to it all tenant deposits with a full accounting thereof relating to the Mortgaged Property as specified in this Section as the same become due and payable, including but not limited to Rents then due and unpaid, and all Rents shall immediately be held by Trustor as trustee for the benefit of Lender only; provided, however, that Lender provide Trustor with written notice that Lender exercises its rights to the Rents. Trustor agrees that commencing upon delivery of such notice each tenant of the Mortgaged Property shall make Rents payable to and pay Rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each tenant's premises on the Mortgaged Property, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor. Notwithstanding any other provision set forth herein, Lender's and Trustor's rights and remedies with respect to the assignment of rents set forth herein shall be governed by the provisions of the Utah Uniform Assignment of Rents Act, Utah Code Title 57, Chapter 26.

**6.2. Assignment of Leases.** Trustor hereby absolutely and unconditionally assigns to Lender its interest under all existing and future leases, licenses and other occupancy agreements for the occupancy or use of all or any part of the Mortgaged Property, and all permitted subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof (collectively, the "**Leases**"). Trustor hereby further assigns to Lender all guaranties of tenants' performance under the Leases. Prior to an Event of Default, Trustor shall have the right, without joinder of Lender, to enforce the Leases, unless Lender directs otherwise and in the event of any conflict or inconsistency between the provisions of this Security Instrument and the provisions of such statutes, the statutory provisions shall control.

**6.3. Warranties Concerning Leases and Rents.** Trustor represents and warrants that: (a) Trustor has not executed any prior assignment of the Rents; (b) Trustor has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein; (c) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder; (d) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged; (e) no Rents have been or will be anticipated, waived, released, discounted, set off or compromised; and (f) except as indicated in the Leases, Trustor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents.

**6.4. Trustor's Covenants of Performance.** Trustor covenants to: (a) perform all of its obligations under the Leases and give prompt notice to Lender of any failure to do so, and comply with the terms and provisions of Applicable Law; (b) give immediate notice to Lender of any notice Trustor receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases; (c) enforce the tenant's obligations under the Leases except when Trustor deems it inadvisable to do so in the exercise of good business judgment; (d) defend, at Trustor's expense, any proceeding pertaining to the Leases, including, if Lender so requests, any such proceeding to which Lender is a party; and (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Security Instrument and any other encumbrances permitted by this Security Instrument.



**6.5. Prior Approval for Actions Affecting Leases.** Trustor shall not, without the prior written consent of Lender, in its sole and absolute discretion: (a) receive or collect Rents more than one (1) month in advance; (b) encumber or assign future Rents; (c) waive or release any obligation of any tenant under Leases, other than residential Leases with tenants that are not affiliated with Trustor in the ordinary course of business, except when Trustor deems it advisable to do so in the exercise of good business judgment; (d) amend or modify any Lease including, without limitation, extending or renewing (except in accordance with the existing Lease provisions, if any) any Lease, other than residential Leases with tenants that are not affiliated with Trustor in the ordinary course of business; (e) cancel or terminate or accept surrender of any Lease, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, other than residential Leases with tenants that are not affiliated with Trustor in the ordinary course of business; (f) enter into any new Lease of the Mortgaged Property or any part thereof, other than residential Leases with tenants that are not affiliated with Trustor in the ordinary course of business; (g) renew or extend any of the Leases, except pursuant to terms in existing Leases, other than residential Leases with tenants that are not affiliated with Trustor in the ordinary course of business; (h) permit any assignment of the Leases; or (i) enter into any Leases other than those substantially in the form of the standard lease form delivered to Lender in connection with the Loan. Upon receipt by Lender, Trustor shall, promptly after entering into any new Lease or amendment to Lease that does not require the consent of Lender hereunder, provide Lender with a copy of any such new Lease or amendment to Lease.

**6.6. Settlement for Termination.** Trustor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state or local statute, shall be made without the prior written consent of Lender, and any check in payment of such damages will be made payable to both Trustor and Lender. Trustor hereby assigns any such payment to Lender to be applied to the Indebtedness as Lender may elect and agrees to endorse any check for such payment to the order of Lender.

**6.7. Lender in Possession.** Lender's acceptance of this assignment of rents shall not, prior to entry upon and taking possession of the Mortgaged Property by Lender, be deemed to constitute Lender a "mortgagee in possession," nor obligate Lender to appear in or defend any proceedings relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Trustor by any tenant and not delivered to Lender. Lender shall not be liable for any injury or damage to person or Mortgaged Property in or about the Mortgaged Property.

**6.8. Indemnification.** Trustor hereby indemnifies and holds Lender (for purposes of this Section, the term "Lender" shall include the directors, officers, partners, employees, representatives and agents of Lender and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Lender) harmless from all liability, damage or expense imposed on or incurred by Lender from any claims under the Leases, including, without limitation, any claims and demands which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or conditions of the Leases, or any claims by Trustor with respect to payments of Rents made directly to Lender after an Event of Default or the exercise of rights or remedies pursuant to Section 9 hereof, and claims by tenants for security



deposits or for rental payments more than one (1) month in advance and not delivered to Lender. All amounts indemnified against hereunder, including, without limitation, attorneys' fees, if paid by Lender shall bear interest at the maximum lawful rate and shall be payable by Trustor in accordance with Section 4.2 hereof. The foregoing indemnities shall not terminate upon the foreclosure, release or other termination of this Security Instrument but will survive foreclosure of this Security Instrument or conveyance in lieu of foreclosure and the repayment of the Indebtedness and the discharge and release of this Security Instrument and the other Loan Documents.

**6.9. Records.** Upon request by Lender, Trustor shall deliver to Lender executed originals of all Leases and copies of all records relating thereto.

**6.10. Merger.** There shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Lender, in its sole and absolute discretion.

**6.11. Right to Rely.** Trustor hereby authorizes and directs the tenants under the Leases (or any successor to the interest of any of said tenants) to pay Rents to Lender upon written demand by Lender without further consent of Trustor, and the tenants may rely upon any written statement delivered by Lender to the tenants. Any such payment to Lender shall constitute payment to Trustor under the Leases. The provisions of this Section are intended solely for the benefit of the tenants and shall never inure to the benefit of Trustor or any person claiming through or under Trustor, other than a tenant who has not received such notice. The assignment of Rents set forth in Section 6.1 is not contingent upon any notice or demand by Lender to the tenants.

## **7. PERSONAL PROPERTY.**

**7.1. Grant of Security Interest.** Trustor hereby grants to Lender a security interest in the Personal Property and other items of the Mortgaged Property which are personal property to secure all of Trustor's obligations to Lender contained in this Security Instrument and any other Loan Documents. This Security Instrument constitutes a Security Agreement with respect to all personal property in which Lender is granted a security interest hereunder, and Lender shall have all of the rights and remedies of a secured party under UCC, as well as all other rights and remedies available at law or in equity.

**7.2. Perfection.** Trustor will execute, acknowledge, deliver and cause to be recorded or filed, in the manner and place required by any present or future law, any instrument that may be requested by Lender to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Security Instrument or the interest of Lender in the Mortgaged Property, to the extent of its interest therein, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Trustor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs, incurred by Lender in connection with the preparation, execution, and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of such instruments. Trustor hereby irrevocably constitutes and

appoints Lender as the attorney-in-fact of Trustor, coupled with an interest to execute, deliver and, if appropriate, file with the appropriate filing officer or office any such instruments if Trustor should fail to do so. In addition to all other rights herein, Trustor hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Trustor on such financing statement or fixture filing.

**7.3. Place of Business.** Trustor maintains a place of business in the State of Utah, as set forth as the address of Trustor provided herein, and Trustor will immediately notify Lender in writing of any change in its place of business.

**7.4. Fixtures.** This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to Fixtures included within the Mortgaged Property and is to be filed for record in the real property records for the county or counties where the Mortgaged Property is situated. The mailing address of Trustor is set forth on the first page of this Security Instrument, and the address of Lender from which information concerning the security interest may be obtained is the address set forth on the first page of this Security Instrument.

**7.5. Filing and Recordation.** Trustor will cause this Security Instrument and all amendments and supplements hereto and substitutions herefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Lender shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

**8. EVENTS OF DEFAULT.** The term “Event of Default” as used in this Security Instrument shall mean any of the following:

(a) The failure to pay any amount when due under the Note, this Security Instrument or any other Loan Document; provided, however, that Trustor shall have five (5) days after written notice to Trustor to cure one (1) monetary default in any consecutive twelve (12) month period (other than payments of principal due on maturity for which there is no cure period);

(b) Trustor or Guarantor (i) dissolves or is the subject of any dissolution, a winding up or a liquidation; (ii) makes a general assignment for the benefit of creditors; or (iii) files or has filed against it a petition in bankruptcy, for a reorganization or an arrangement, or for a receiver, trustee or similar creditors’ representative for its property or assets or any part thereof, or any other proceeding under any federal or state insolvency law, and if filed against it, the same has not been dismissed or discharged within sixty (60) days thereof;

(c) If any representation or warranty made by Trustor, any Guarantor or any Principal in this Security Instrument, any other Loan Document, or in any certificate, report, financial statement or other instrument or document furnished to Lender in connection with the Loan at any time, shall have been false or misleading in any material respect as of the date made;

(d) If any monetary judgment is entered against Trustor or any Guarantor and is not bonded (to Lender’s satisfaction), released, or satisfied within thirty (30) days of entry or is not covered to Lender’s satisfaction by collectible insurance proceeds;

(e) If Trustor violates or fails to comply with any provision of Section 3.27 (Single Purpose Entity) and such non-compliance is not remedied within ten (10) days after discovery thereof;

(f) If Trustor violates or fails to comply with any of the provisions of Section 3.11 (Insurance), Section 3.21 (Change of Name), or Section 3.29 (OFAC);

(g) If a transfer occurs without Lender's prior written consent or in violation of the terms of Lender's consent (but excluding transfers to Transferees in accordance with Section 3.28);

(h) If an Encumbrance is filed against the Mortgaged Property without the prior written consent of Lender, unless the Encumbrance is a mechanic's or materialman's lien that is removed or bonded in accordance with Section 3.14;

(i) There shall occur or be reported a material adverse change in the assets, liabilities, financial condition, ownership, or business operations of any Guarantor or Principal, including without limitation a breach of any net worth covenant or liquid asset covenant made by Guarantor under any Guaranty that is part of the Loan Documents;

(j) If any default, beyond any applicable notice and cure periods, occurs under any loan made by Lender to any affiliate of Trustor (including, without limitation, any loan by Lender to Aubrey Utah Apartments LLC, a Delaware limited liability company); and

(k) Except for the specific defaults set forth above, and except for a default under clause (i) of this Section 8 above, if any other default occurs hereunder or under any other Loan Document (except the Note), which is not cured within thirty (30) days after written notice from Lender to Trustor and provided that if a default cannot reasonably be cured within such thirty (30) day period and Trustor has responsibly commenced to cure such default promptly upon notice thereof from Lender and thereafter diligently proceeds to cure same, such thirty (30) day period shall be extended for so long as it shall require Trustor, in the exercise of due diligence, to cure such default, but in no event shall the entire cure period be more than sixty (60) days. In the event of a default under clause (i) of this Section 8, Lender may, in its sole discretion, upon sixty (60) days' prior written notice either require the Trustor to provide a substitute Guarantor, or declare the Loan immediately due and payable in full.

## **9. REMEDIES AND RELATED RIGHTS.**

**9.1. Remedies.** If an Event of Default shall occur, Lender may exercise any one or more of the following remedies and shall, in addition to any other rights, have the following related rights, without notice (unless notice is required by Applicable Law):

(a) *Acceleration.* Upon the occurrence of an Event of Default, Lender shall have the option of declaring all Indebtedness in its entirety to be immediately due and payable by providing Trustor with written notice, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as Lender may elect.

(b) *Possession.* Upon the occurrence of an Event of Default, Lender is authorized prior or subsequent to the institution of any foreclosure proceedings, and without regard to the adequacy of Lender's security, to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Mortgaged Property and of all books, records and accounts relating thereto and to exercise without interference from Trustor any and all rights which Trustor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property, including the right to collect all Rents, execute, cancel and modify Leases, and deduct from the Rents all costs, expenses and liabilities of every character incurred by Lender in collecting the Rents and in managing, operating, maintaining, protecting or preserving the Mortgaged Property and to apply the remainder of the Rents to the Indebtedness in such manner as Lender may elect in its sole discretion. Lender shall have the right to expend such sums of money that it may deem necessary for the maintenance, preservation and operation of the Mortgaged Property, including expenditures for improvements, alterations and repairs, including those of a capital nature, and all such sums so expended, along with all such costs, expenses and liabilities incurred by Lender in collecting the Rents and in managing, operating, maintaining or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Trustor and shall be subject to and covered by Section 4.2 hereof. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Trustor, including, without limitation, one or more actions for forcible entry and detainer, trespass to try title and restitution. In connection with any action taken by Lender pursuant to this Section, Lender shall not be liable for any loss sustained by Trustor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Lender in managing the Mortgaged Property unless such loss is caused by the willful misconduct and bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease covering the Mortgaged Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Nothing in this Section shall impose any duty, obligation or responsibility upon Lender for the control, care, management or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Trustor hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Mortgaged Property taken under this Section. The assignment of rents of the Mortgaged Property set forth in Section 6 shall terminate at such time as this Security Instrument ceases to secure indebtedness held by Lender.

(c) *Foreclosure.* Trustee, his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Lender to sell the Mortgaged Property or any part thereof in accordance with Utah Code Sections 57-1-27, 57-1-28 and 57-1-29 at the courthouse of any county in the state where any part of the Mortgaged Property is located, at public venue to the highest bidder for cash. The sale shall be held at such time and in such place as is required by Applicable Law as then in force governing sales of real estate under powers conferred by deeds of trust. Notice of a sale of all or part of the Mortgaged Property by Trustee shall be given as required by Applicable Law. If Mortgaged Property is to be sold in more than one county, a notice shall be posted at the courthouse door and filed with the county clerk of each county in which the Mortgaged Property is situated. In addition, unless otherwise required by Applicable



Law, Lender shall, at least twenty (20) days preceding the date of sale, serve written notice of the proposed sale by first class mail on Trustor and each debtor obligated to pay the Indebtedness or any portion thereof according to the records of Lender. Service of such notice shall be completed upon deposit of the notice, enclosed in a postage-paid, first-class envelope, properly addressed to Trustor and each such debtor at the most recent address as shown by the records of Lender, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Lender may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and, if the proceeds of such sale of less than the whole of the Mortgaged Property shall be less than the aggregate of the Indebtedness and the expense of executing this trust as provided herein, this Security Instrument and the lien hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made; provided, however, that Trustor shall never have any right to require the sale of less than the whole of the Mortgaged Property but Lender shall have the right, at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Trustor, conveying the property so sold to the purchaser or purchasers in fee simple, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Lender may deem necessary until all of the Mortgaged Property has been duly sold and all Indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Lender, such sale shall not exhaust the power of sale hereunder, and Lender shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Indebtedness, or as to the occurrence of any Event of Default, or as to Lender having declared all of such Indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor, or as to the appointment of any substitute or successor Trustee, or as to any other act or thing having been duly done by Lender or by Trustee or any substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. Trustee, his successor or substitute, may, to the maximum extent permitted by Applicable Law, appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including, without limitation, the posting of notices and the conducting of sales, but in the name and on behalf of Trustee, his successor or substitute.

(d) *Judicial Foreclosure.* This Security Instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Mortgaged Property in any manner permitted by Applicable Law, or of

any other state in which any part of the Mortgaged Property is situated, and any foreclosure suit may be brought by Trustee or by Lender. In the event a foreclosure hereunder shall be commenced by Trustee, or its substitute or successor, Lender may at any time before the sale of the Mortgaged Property direct Trustee to abandon the sale, and may then institute suit for the collection of the Indebtedness, and for the foreclosure of this Security Instrument. It is agreed that if Lender should institute a suit for the collection of the Indebtedness and for the foreclosure of this Security Instrument, Lender may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, its substitute or successor to sell the Mortgaged Property in accordance with the provisions of this Security Instrument.

(e) *Rights and Remedies of a Secured Party.* Lender shall have all the rights and remedies of a secured party under the UCC, including, but not limited to, the right to sell the Personal Property at public or private sale, and Lender shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under Applicable Law, specifically including, without limitation, the right to proceed as to both the real property and the personal property contained within the Mortgaged Property as permitted by UCC Section 9-604(a). Any such disposition may be conducted by an employee or agent of Lender or Trustee. Any person, including both Trustee and Lender, shall be eligible to purchase any part or all of such property at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include, without limitation, Lender's and Trustee's actual attorneys' fees and legal expenses. Trustor, upon demand of Lender, shall assemble Personal Property and make it available to Lender at such place as shall be required by Lender in its sole and absolute discretion. Lender shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of Personal Property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, at the same address as is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor.

(f) *Receiver.* In addition to all other remedies herein provided for, Trustor agrees that upon the occurrence of an Event of Default, Lender shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale of the Mortgaged Property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the Indebtedness, and Trustor does hereby consent 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 Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents pursuant to Section 6.1 hereof. Any money advanced by Lender in connection with any such receivership shall be subject to and covered by Section 4.2 hereof.

**9.2. Proceeds of Sale.** Subject to Utah Code Section 57-1-29, the proceeds of any sale held by Trustor, Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied as provided below or as otherwise required by Applicable Law:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character in the event foreclosed by suit, reasonable attorneys' fees and a reasonable fee to Trustee acting under the provisions of Section 9.1(c) if foreclosed by power of sale as provided in said Section, not to exceed the amount permitted by Applicable Law;

SECOND, to the payment in full of the Indebtedness (including, without limitation, the principal and interest due and unpaid on the Note, attorneys' fees and any other amounts due and unpaid and owed to Lender under this Security Instrument) in such order as Lender may elect in its sole direction; and

THIRD, the remainder, if any, shall be paid to Trustor or to such other party or parties as may be entitled thereto by law.

**9.3. Lender as Purchaser.** Lender shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and any Lender purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the Indebtedness owing to such Lender.

**9.4. Partial Foreclosure.** Subject to Applicable Law, in the event of an Event of Default in the payment of any part of the Indebtedness, Lender shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part this Security Instrument shall remain in full force and effect just as though no sale had been made. The proceeds of any such sale shall be applied as provided in Section 9.2 except that the amount paid shall be only the matured portion of the Indebtedness. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness.

**9.5. Rights and Remedies Cumulative.** All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any of the other Loan Documents, or any part thereof, or otherwise benefiting Lender, and Trustee and Lender shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and resort to any remedy provided for hereunder or under any such Loan Documents or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

**9.6. Resort to Any Security.** Lender may resort to any security given by this Security Instrument or to any other security now existing or hereafter given to secure the payment of the Indebtedness, in whole or in part, and in such portions and in such order as Lender may determine in accordance with Utah Code Section 57-1-27, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Security Instrument.

**9.7. Waiver.** To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any appraisal, valuation, stay, extension or redemption, and Trustor, for Trustor and Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Indebtedness, notice of election to mature or declare due the whole of the Indebtedness and all rights to a marshaling of the assets of Trustor, including, without limitation, the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Trustor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort of collection, or the right of Lender under the terms of this Security Instrument to the payment of such Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Trustor or Trustor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be enforced, such law shall not thereafter be deemed to preclude the application of this Section.

**9.8. Delivery of Possession After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale Trustor or Trustor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Property by, through or under Trustor are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in the appropriate court having jurisdiction.

## **10. MISCELLANEOUS.**

**10.1. Defeasance.** If all of the Indebtedness is paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Security Instrument are kept and performed, then and in that event only, and subject to the provisions of Section 3.18 and Section 6.8 hereof, all rights under this Security Instrument shall terminate and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender in due form at Trustor's cost.

**10.2. Successor Trustee.** Trustee may resign by an instrument in writing addressed to Lender, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Lender. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Lender shall deem it desirable to appoint a substitute or successor Trustee to act



instead of the herein named Trustee or any substitute or successor Trustee, then Lender shall have the right and is hereby authorized and empowered to appoint a successor Trustee, or a substitute Trustee, by an instrument in writing executed by Lender and recorded in the official records of the county in which the Land is located and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the Indebtedness has been paid in full or until the Mortgaged Property is sold hereunder. In the event the Indebtedness is owned by more than one person or entity, the holders of not less than a majority in the amount of such Indebtedness shall have the right and authority to make the appointment of a successor or substitute Trustee provided for in the preceding sentence. Such appointment and designation by Lender or by the holder or holders of not less than a majority of the Indebtedness shall be full evidence of the right and authority to make the same and of all facts therein recited. If Lender is a state or national banking association or corporation and such appointment is executed in its behalf by an officer of such association or corporation, 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 or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Mortgaged Property shall vest in the named successor or substitute Trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but nevertheless, upon the written request of Lender or of the successor or substitute Trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Mortgaged Property of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Trustor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

**10.3. Liability 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 (including, without limitation, Trustee's negligence), 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 him hereunder, believed by him in good faith to be genuine. All moneys 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 moneys (except to the extent required by Applicable Law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. **Trustor will reimburse Trustee for, and indemnify and save him harmless against, any and all liability and expenses (including, without limitation, reasonable attorneys' fees) that may be incurred by Trustee in the performance of its duties hereunder (as used in this Section, the term "Trustee" shall include, without limitation, the directors, officers, partners, employees, representatives and agents of Trustee and any persons or entities owned or controlled by, owning or controlling or under common control or affiliated with Trustee). The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Security Instrument.**

**10.4. Waiver by Lender.** Lender may at any time and from time to time in writing (a) waive compliance by Trustor with any covenant herein made by Trustor to the extent and in the manner specified in such writing; (b) consent to Trustor doing any act which hereunder Trustor is prohibited from doing, or consent to Trustor failing to do any act which hereunder Trustor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Mortgaged Property, or any interest therein, from the lien and security interest of this Security Instrument without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the Indebtedness or for any covenant herein or in any of the other Loan Documents now or hereafter securing the payment of the Indebtedness, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Lender hereunder except to the extent specifically agreed to by Lender in such writing.

**10.5. Actions by Lender.** The lien, security interest and other security rights of Lender hereunder shall not be impaired by any indulgence, moratorium or release granted by Lender, including but not limited to (a) any renewal, extension, increase or modification which Lender may grant with respect to any of the Indebtedness; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Mortgaged Property, or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any of the Indebtedness. The taking of additional security by Lender shall not release or impair the lien, security interest or other security rights of Lender hereunder or affect the liability of Trustor or of any endorser or guarantor or other surety or improve the rights of any permitted junior lienholder in the Mortgaged Property.

**10.6. Appointment of Lender as Attorney-in-Fact.** Lender, or any of its officers, is hereby irrevocably appointed attorney-in-fact for Trustor (without requiring any of them to act as such), such appointment being coupled with an interest, to do any or all of the following: (a) collect the Rents in accordance with Section 6.1 and Section 9.1; (b) settle for, collect and receive any awards payable under Section 3.12; and (c) execute, deliver and file such financing statements and other instruments as Lender may require in order to perfect and maintain its security interest under the Code on any portion of the Mortgaged Property.

**10.7. Notification of Account Debtors.** Lender may at any time after Event of Default by Trustor notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Personal Property to pay Lender directly.

**10.8. Dealing with Successor.** In the event the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Trustor, Lender may, without notice to Trustor, deal with such successor or successors in interest with reference to this Security Instrument and to the Indebtedness in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for the payment of the Indebtedness; provided, however, nothing in this Section shall be construed as permitting any transfer of the Mortgaged Property which would constitute an Event of Default under this Security Instrument. No sale of the Mortgaged Property, no forbearance on the part of Lender and no extension of the time for the payment of the Indebtedness given by Lender shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Trustor hereunder or for the payment

of the Indebtedness or the liability of any other person hereunder or for the payment of the Indebtedness, except as agreed to in writing by Lender.

**10.9. Subrogation.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property, such proceeds have been advanced by Lender at Trustor's request and, Lender shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, if any, irrespective of whether said liens, security interests, charges or encumbrances are released; provided, however, that the terms and provisions of this Security Instrument shall govern the rights and remedies of Lender and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the liens, security interests, charges or encumbrances to which Lender is subrogated hereunder.

**10.10. Application of Indebtedness.** If any part of the Indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of the Indebtedness, then all payments made shall be applied on said Indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

**10.11. Usury.** This Security Instrument and all of the other Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable usury laws. If any provision hereof or of any of the other Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby and shall be enforced to the greatest extent permitted by Applicable Law. It is expressly stipulated and agreed to be the intent of Trustor and Lender to at all times comply with the usury and other Applicable Laws now or hereafter governing the interest payable on the Indebtedness. If the Applicable Law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if Lender's exercise of the option to accelerate the maturity of the Indebtedness, or if any prepayment of the Indebtedness results in the payment of any interest in excess of that permitted by law, then it is the express intent of Trustor and Lender that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note and all of such other Indebtedness have been paid in full, refunded), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest lawful amount otherwise called for hereunder or thereunder. All sums paid, or agreed to be paid, for the use, forbearance, detention, taking, charging, receiving or reserving on the Indebtedness shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on account of such Indebtedness does not exceed the usury ceiling from time to time in effect and applicable thereto ("**Maximum Rate**") for so long as debt is outstanding under the Indebtedness. To the extent federal law permits Lender to contract for, charge, receive, reserve or take a greater amount of interest, Lender will rely on federal law instead

of such article, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by Applicable Law now in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Rate under such article, as amended, or under other Applicable Law by giving notice, if required, to Trustor as provided by Applicable Law now or hereafter in effect. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**10.12. Notice.** Any notice, request, demand or other communication required or permitted hereunder, or under the Note, or under any of the other Loan Documents (unless otherwise expressly provided therein) shall be given in writing by (a) personal delivery, (b) expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address shown in this Security Instrument, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail as of the date of first attempted delivery at the address and in the manner provided herein.

**10.13. Heirs, Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Trustor, and the heirs, devisees, representatives, successors and assigns of Trustor including all successors in interest of Trustor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Trustee and Lender and their respective heirs, successors, substitutes and assigns and shall constitute covenants running with the Land. All references in this Security Instrument to Trustor, Trustee, or Lender shall be deemed to include all such heirs, devisees, representatives, successors, substitutes, and assigns.

**10.14. Severability.** A determination that any provision of this Security Instrument 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 this Security Instrument to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

**10.15. Gender and Number.** Within this Security Instrument, 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 and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

**10.16. Counterparts.** This Security Instrument may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

**10.17. Joint and Several.** Where two or more persons or entities have executed this Security Instrument, unless the context clearly indicates otherwise, the term "Trustor" as used in



this Security Instrument means the Trustor hereunder or either or any of them and the obligations of Trustor hereunder shall be joint and several.

**10.18. Headings.** The Section headings contained in this Security Instrument are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

**10.19. Consent of Lender.** Except where otherwise provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Lender is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Lender, and Lender shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Lender's judgment.

**10.20. Modification or Termination.** The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination that is not so documented shall not be effective as to any party. Trustor agrees that it shall be bound by any modification of this Security Instrument or any of the other Loan Documents made by Lender and any subsequent owner of the Mortgaged Property, with or without notice to or consent of Trustor, and no such modification shall impair the obligations of Trustor under this Security Instrument or under any other Loan Document.

**10.21. Negation of Partnership.** Nothing contained in the Loan Documents is intended to create any partnership, joint venture, or association between Trustor and Lender, or in any way make Lender a co-principal with Trustor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

**10.22. Entire Agreement.** The Loan Documents constitute the entire understanding and agreement between Trustor and Lender with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Trustor and Lender with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

**10.23. Time.** Time is of the essence for the performance of each and every covenant of Trustor hereunder. No excuse, delay, act of God, or other reason, whether or not within the control of Trustor shall operate to defer, reduce or waive Trustor's performance of any such covenant or obligation.

**10.24. Governing Law.** This Security Instrument will be interpreted under, and the rights and liabilities of Lender and Trustor determined in accordance with the laws of the State of Utah, excluding its conflict of laws rules, and will include all matters arising out of or relating to this Agreement, including without limitation claims as to its validity, interpretation, construction, performance, and all claims sounding in tort. Trustor hereby irrevocably consents to the exclusive

jurisdiction of any state or federal court in such state; provided, however, that nothing contained in this Security Instrument will prevent Lender from bringing any action, enforcing any award or judgment, or exercising any rights against Trustor individually, against any security, or against any property of Trustor within any other jurisdiction. Trustor acknowledges and agrees that the venue provided above is the most convenient forum for both Lender and Trustor. Trustor waives any objection to venue and any obligation based on a more convenient forum in any action instituted under this Security Instrument.

**10.25. WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRUSTOR IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS SECURITY INSTRUMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS SECURITY INSTRUMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. TRUSTOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

**11. STATE SPECIFIC PROVISIONS.**

**11.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Section 11 and each of its subsections and the terms and conditions of this Security Instrument, the terms and conditions of this Section 11 and each of its subsections shall control and be binding.

**11.2 Power of Sale.** Time is of the essence hereof. Upon occurrence of an Event of Default and expiration of any applicable grace period all sums secured hereby shall immediately become due and payable at the option of Lender. In the event of such default, Lender may execute or cause Trustee to execute a written notice of default and of election to cause said Mortgaged Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said Mortgaged Property or some part or parcel thereof is situated. Lender shall also deposit with Trustee, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of said notice of default, any notice of default and notice of sale having been given, as then required by law, Trustee, without demand on Trustor, shall sell said Mortgaged Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, it being agreed, that to the fullest extent possible under applicable law and equity, Lender is hereby granted the absolute right to select the order in which the foreclosure sales of multiple parcels of the Mortgaged Property shall be sold. The Mortgaged Property shall be sold at public auction to the highest bidder, the purchase price to be paid in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than 72 hours (or such other authorized statutory period) beyond the time designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its deed conveying said Mortgaged Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale.

Trustee shall apply the proceeds of the sale to payment of (1) the costs and expense of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of interest applicable under the Note secured hereby from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the clerk of the appropriate court in the county in which the sale took place. Trustor agrees to surrender possession of the Mortgaged Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by the Trustor.

UTAH STATUTE OF FRAUDS. PURSUANT TO UTAH CODE SECTION 25-5-4, TRUSTOR AND LENDER HEREBY ACKNOWLEDGE THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED 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.

[Remainder of page intentionally left blank; signature page follows.]

EXECUTED as of the date first written above.

**TRUSTOR:**

HART UTAH APARTMENTS LLC,  
a Delaware limited liability company

By: Thomas A. Leonard III

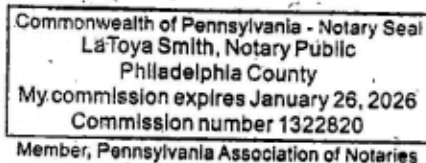
Name: Thomas A. Leonard, III

Title: Authorized Representative

Commonwealth of Pennsylvania } ss  
County of Philadelphia }

On this 14<sup>th</sup> day of October, 2022, before me, the undersigned Notary Public, appeared Thomas A. Leonard, III, who acknowledged himself to be the Authorized Representative of Hart Utah Apartments LLC, a Delaware limited liability company, and that he, as such Authorized Representative being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of such limited liability company.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.



LaToya Smith  
Notary Public

My commission expires January 26, 2026



**EXHIBIT "A"**

**Legal Description**

Lots 1 and 2, THE HART AT CITY CENTER, according to the official plat thereof on file in the office of the Davis County Recorder, State of Utah.