

E 3574085 B 8516 P 1033-1059
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
06/04/2024 03:49:33 PM
FEE: \$40.00 Pgs: 27
DEP eCASH REC'D FOR: STEWART TITLE OF
UTAH

Utah
Loan No. 345821
RECORDING REQUESTED BY,

The Northwestern Mutual Life
Insurance Company

AND WHEN RECORDED MAIL TO:

The Northwestern Mutual Life Ins. Co.
720 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Molly Cusick

2305726 SPACE ABOVE THIS LINE FOR RECORDER'S USE
12-957-0010

DEED OF TRUST and SECURITY AGREEMENT

THIS DEED OF TRUST and SECURITY AGREEMENT is made as of the 4
day of June, 2024 between ARLO APARTMENTS, LLC, a Utah limited liability company,
whose mailing address is 1877 West 4000 South, Roy, UT 84067, herein called "Trustor",
and STEWART TITLE OF UTAH, INC., a Utah corporation, whose mailing address is
1518 North Woodland Park Drive, Layton, Utah 84041, herein called "Trustee", and THE
NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin
corporation, whose mailing address is 720 E. Wisconsin Avenue, Milwaukee, WI 53202,
herein called "Beneficiary":

WITNESSETH, That Trustor, in consideration of the indebtedness herein
mentioned, does hereby irrevocably bargain, sell, grant, transfer, assign and convey unto
Trustee, in trust, with power of sale and right of entry and possession, the following
property (herein referred to as the "Property"):

- A. The land in the City of Syracuse, County of Davis, State of
Utah, described in Exhibit "A" attached hereto and incorporated
herein (the "Land");
- B. All easements, appurtenances, tenements and hereditaments
belonging to or benefiting the Land, including but not limited to
all waters, water rights, water courses, all ways, trees, rights,
liberties and privileges;

- C. All improvements to the Land, including, but not limited to, all buildings, structures and improvements now existing or hereafter erected on the Land; all fixtures and equipment of every description belonging to Trustor which are or may be placed or used upon the Land or attached to the buildings, structures or improvements, including, but not limited to, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning and ventilating equipment, water and gas fixtures, and all furniture and easily removable equipment; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; and
- D. Trustor's interest in all articles of personal property of every kind and nature whatsoever now or hereafter located upon the Land or in or on the buildings and improvements and now owned or leased or hereafter acquired or leased by Trustor, including, but not limited to, all furniture and easily removable equipment and fixtures.

Trustor agrees not to sell, transfer, assign or remove anything described in paragraphs B, C and D above now or hereafter located on the Land without prior written consent from Beneficiary unless (i) such action does not constitute a sale or removal of any buildings or structures or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants, Trustor hereby pledges to Beneficiary, and grants to Beneficiary a security interest in, all of Trustor's present and hereafter acquired right, title and interest in and to the Property and any and all

- E. cash and other funds now or at any time hereafter deposited by or for Trustor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Beneficiary or a third party, or otherwise deposited with, or in the possession of, Beneficiary pursuant to the Loan Documents; and
- F. surveys, soils reports, environmental reports, guaranties, warranties, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds

and other contracts relating to the acquisition, design, development, construction and operation of the Property; and

- G. accounts, chattel paper, deposit accounts, instruments, equipment, inventory, documents, general intangibles, letter-of-credit rights, investment property and all other personal property of Trustor, (including, without limitation, any and all rights in the property name "Arlo"); and
- H. present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Trustor on account of the Property or any of the foregoing personal property.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law and Trustor authorizes Beneficiary to file a financing statement describing such Property and, at Beneficiary's request, agrees to join with Beneficiary in the execution of any financing statements and to execute any other instruments that may be necessary or desirable, in Beneficiary's determination, for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Trustee for the purpose of securing:

(a) Payment to the order of Beneficiary of the indebtedness evidenced by a promissory note of even date herewith (and any restatement, extension or renewal thereof and any amendment thereto) executed by Trustor for the principal sum of FORTY-FOUR MILLION SIX HUNDRED THOUSAND DOLLARS, with final maturity no later than June 5, 2029 and with interest as therein expressed (which promissory note, as such instrument may be amended, restated, renewed and extended, is hereinafter referred to as the "Note"), it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

(b) Payment of all sums that may become due Beneficiary under the provisions of, and the performance of each agreement of Trustor contained in, the Loan Documents.

"Loan Documents" means this instrument, the Note, that certain Loan Application dated April 5, 2024 from Trustor to Beneficiary and that certain acceptance letter issued by Beneficiary dated May 23, 2024 (together, the "Commitment"), that certain Absolute

Assignment of Leases and Rents of even date herewith (the "Absolute Assignment"), that certain Certification of Borrower of even date herewith, any supplements and authorizations required by Beneficiary, and any other agreement entered into or document executed by Trustor and delivered to Beneficiary in connection with the indebtedness evidenced by the Note, except for that certain Environmental Indemnity Agreement of even date herewith given by Mike Schultz (the "Principal") and Trustor to Beneficiary (the "Environmental Indemnity Agreement"), as any of the foregoing may be amended from time to time.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

Payment of Debt. Trustor agrees to pay the indebtedness hereby secured (the "Indebtedness") subject to the terms of the Loan Documents.

Ownership. Trustor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the official records of the county in which the Land is located. Trustor does hereby forever warrant and shall forever defend the title and possession thereof against the claims of any and all persons whomsoever.

Maintenance of Property and Compliance with Laws. Trustor agrees to keep the buildings and other improvements now or hereafter erected on the Land in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Beneficiary to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Beneficiary determines to be necessary in order to monitor Trustor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

Tenants Using Chlorinated Solvents. Trustor agrees not to lease any of the Property, without the prior written consent of Beneficiary, to (i) dry cleaning operations that perform dry cleaning on site with chlorinated solvents or (ii) any other tenants that use chlorinated solvents in the operation of their businesses.

Business Restriction Representation, Warranty, and Covenant. Trustor represents, warrants and covenants, as applicable, that each of Trustor, all persons and entities owning (directly or indirectly) an ownership interest in Trustor, all guarantors of all or any portion of the Indebtedness, all persons and entities owning (directly or indirectly) an ownership interest in such guarantors and all persons and entities executing any separate indemnity agreement in favor of Beneficiary in connection with the Indebtedness: (i) is not, and shall not become, a person or entity with whom Beneficiary is restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any other law, executive order, enabling

legislation or regulation administered and enforced by the United States (collectively, "U.S. Economic Sanctions Laws"); (ii) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; (iii) is not, and shall not become, a person or entity appearing on the New York Office of General Services List of entities determined to be non-responsive bidders/offers pursuant to The New York State Iran Divestment Act of 2012; and (iv) will take no action that would violate or would cause Beneficiary to violate any U.S. Economic Sanctions Laws.

Insurance. Trustor agrees to keep the Property insured for the protection of Beneficiary and Beneficiary's wholly owned subsidiaries and agents in such manner, in such amounts and in such companies as Beneficiary may from time to time approve, and to keep the policies therefor, properly endorsed, on deposit with Beneficiary, or at Beneficiary's option, to keep evidence of insurance acceptable to Beneficiary evidencing all insurance coverages required hereunder on deposit with Beneficiary, which evidence shall reflect at least thirty (30) days' notice of cancellation to Beneficiary and shall list Beneficiary as the certificate holder or as a similar additional interest with Beneficiary's correct mailing address and the loan number assigned to the loan (345821); if Trustor requests Beneficiary to accept a different form of evidence, Beneficiary shall not unreasonably withhold its consent, provided, a copy of a standard mortgagee endorsement in favor of Beneficiary stating that the insurer shall provide at least thirty (30) days' notice of cancellation to Beneficiary accompanies such evidence. Trustor shall furnish Beneficiary with renewals of all applicable insurance evidence no later than the actual insurance expiration date.

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Trustor shall give prompt written notice thereof to Beneficiary. Following the occurrence of a casualty, Trustor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the improvements on the Property to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. All insurance loss proceeds from all property insurance policies, whether or not required by Beneficiary (less expenses of collection) shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Trustor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Beneficiary elects to apply the insurance loss proceeds on the Indebtedness, no prepayment fee shall be due thereon.

Notwithstanding the foregoing provision, Beneficiary agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and if the casualty occurs prior to the last year of the term of the Note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default at the time of casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds to Trustor as a result of any act, neglect, use or occupancy of the Property by Trustor or any tenant of the Property.
- (c) Beneficiary shall be satisfied that all insurance loss proceeds so held, together with supplemental funds to be made available by Trustor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Beneficiary, be applied on the Indebtedness, whether or not due, or be released to Trustor.
- (d) If required by Beneficiary, Beneficiary shall be furnished a satisfactory report addressed to Beneficiary from an environmental engineer or other qualified professional satisfactory to Beneficiary to the effect that no adverse environmental impact to the Property resulted from the casualty.
- (e) Beneficiary shall release casualty insurance proceeds as restoration of the Property progresses provided that Beneficiary is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Monetary Default (as hereinafter defined) under the Loan Documents and no Non-Monetary Default with respect to which Beneficiary shall have given Trustor notice pursuant to the "**Notice of Default**" provision herein. If a Monetary Default shall occur or Beneficiary shall give Trustor notice of a Non-Monetary Default, Beneficiary shall have no further obligation to release insurance loss proceeds hereunder unless such default is cured within the cure period set forth in the "**Notice of Default**" provision contained herein. If the estimated cost of restoration exceeds \$250,000.00, (i) the drawings and specifications for the restoration shall be approved by Beneficiary in writing prior to commencement of the restoration, and (ii) Beneficiary shall receive an administration fee equal to one percent (1%) of the cost of restoration.
- (f) Prior to each release of funds, Trustor shall obtain, at Trustor's expense, title evidence satisfactory to Beneficiary to confirm Beneficiary's lien as a first and valid lien on the Property subject only to liens and encumbrances theretofore approved by Beneficiary.
- (g) Trustor shall pay all reasonable costs and expenses incurred by Beneficiary, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Beneficiary.

- (h) All reciprocal easement and operating agreements benefiting the Property, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.
- (i) Beneficiary shall be satisfied that Projected Debt Service Coverage of at least 1.30 will be produced from the leasing of space to former tenants or new tenants with leases satisfactory to Beneficiary to commence within a reasonable time following completion of such restoration (the "Approved Leases").
- (j) All leases in effect at the time of the casualty with tenants, if any, who have entered into a non-disturbance and attornment agreement or similar agreement with Beneficiary shall remain in full force and Beneficiary shall be satisfied that restoration can be completed within a time frame such that each tenant thereunder shall be obligated, or each such tenant shall have elected, to continue the lease term at full rental (subject only to abatement, if any, during any period in which the Property or portion thereof shall not be used and occupied by such tenant as a result of the casualty).
- (k) Without limiting the "Earthquake" provisions contained herein, if the casualty has resulted in whole or part from an earthquake: (a) Trustor shall have supplied Beneficiary with a new seismic analysis (in accordance with the Earthquake provisions herein) which shows that the Property will meet "Minimum Seismic Criteria" (as defined in the Earthquake provisions herein) upon completion of repair and retrofit work which can be completed within one (1) year of the earthquake, (b) prior to commencement of the restoration, Trustor shall have committed in writing to Beneficiary that Trustor will do such repair and retrofit work as shall be necessary to cause the Property to in fact meet Minimum Seismic Criteria following completion of restoration, and (c) Beneficiary must at all times during the restoration be reasonably satisfied that the Property will meet Minimum Seismic Criteria following completion of the restoration, Trustor hereby agreeing to supply Beneficiary with such evidence thereof as Beneficiary shall request from time to time.

"Projected Debt Service Coverage" means a number calculated by dividing Projected Operating Income Available for Debt Service for the first fiscal year following restoration of the Property by the debt service during the same fiscal year under all indebtedness secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) debt service due under all such indebtedness during the first fiscal year following completion of the restoration of the Property or (y) debt service that would be due and payable during such fiscal year if all such indebtedness were amortized over thirty (30) years (whether or not amortization is

actually required) and if interest on such indebtedness were due as it accrues at the face rate shown on the notes therefor (whether or not interest payments based on such face rates are required).

"Projected Operating Income Available for Debt Service" means projected gross annual rent from the Approved Leases for the first full fiscal year following completion of the restoration of the Property less:

- (A) The operating expenses of the Property for the last fiscal year preceding the casualty and
- (B) The following:
 - (i) The amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
 - (ii) The amount, if any, by which the actual management fee is less than 2.5% of gross revenue during such fiscal period;
 - (iii) The amount, if any, by which the actual real estate taxes are less than \$1,600.00 per unit per annum; and
 - (iv) The amount, if any, by which total operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$4,800.00 per unit per annum.

All projections referenced above shall be calculated in a manner satisfactory to Beneficiary.

Notwithstanding anything to the contrary in this instrument, except for Permitted Work (hereinafter defined), Trustor shall not demolish, remove, construct, restore, add to or alter any portion of the Property, or consent to or permit any such demolition, removal, construction, restoration, addition, or alteration without Beneficiary's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

"Permitted Work" means:

- (1) work having a cost not to exceed \$2,500,000 in the aggregate during any twelve (12) month period, or
- (2) for residential properties, unit renovations performed as units become vacant provided that such renovation shall take no longer than three (3) months for any

unit and no more than five percent (5%) of the total units shall be under renovation at any time.

For avoidance of doubt, any work to be performed at the Property as a result of a fire or other casualty, or as a result of a Taking, that would otherwise constitute "Permitted Work" must also comply with the requirements of this instrument applicable to casualty or the requirements of this instrument applicable to condemnation, as applicable.

Condemnation. Trustor hereby assigns to Beneficiary (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property, and (ii) the proceeds from any sale or transfer in lieu thereof (collectively, "Condemnation Proceeds") in connection with condemnation proceedings or the exercise of any power of eminent domain or the threat thereof (hereinafter, a "Taking"); and Trustor grants Beneficiary the right, at its option, to apply such Condemnation Proceeds (less expenses of collection) on the Indebtedness, (including any prepayment fee), whether due or not, or to the restoration of the Property or to release all or any portion thereof, but such application or release shall not cure or waive any default under any of the Loan Documents.

Notwithstanding the foregoing, if the Condemnation Proceeds are less than the unpaid principal balance of the Note and such damage or Taking occurs prior to the final year of the term of the Note, such Condemnation Proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition, or the functional equivalent of its condition prior to the Taking, subject to the conditions set forth above in the section entitled "**Insurance**" and subject to the further condition that restoration or replacement of the improvements on the Land to their functional and economic utility prior to the Taking be possible. Any portion of such award and proceeds not applied to restoration shall, at Beneficiary's option, be applied on the Indebtedness, whether due or not, or be released to Trustor, but such application or release shall not cure or waive any default under any of the Loan Documents.

Taxes and Special Assessments. Trustor agrees to pay when due all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Trustee or Beneficiary in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Beneficiary within thirty (30) days after Beneficiary shall have given a written request to Trustor, the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Trustor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Beneficiary.

Personal Property. With respect to the Personal Property, Trustor hereby represents, warrants and covenants as follows:

- (a) Except for the security interest granted hereby, Trustor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Trustor shall notify Beneficiary of, and shall indemnify and defend Beneficiary and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.
- (b) Except as otherwise provided above, Trustor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Beneficiary.
- (c) Trustor is a limited liability company formed or organized, as applicable, and existing under the laws of the state of Utah. Until the Indebtedness is paid in full, Trustor (i) shall not change its legal name without providing Beneficiary with thirty (30) days prior written notice; (ii) shall not change its state of organization; and (iii) shall preserve its existence and shall not, in one transaction or a series of transactions, merge into or consolidate with any other entity.
- (d) At the request of Beneficiary, Trustor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Beneficiary, and Trustor shall pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Trustor shall also, at Trustor's expense, take any and all other action reasonably requested by Beneficiary to perfect Beneficiary's security interest under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, exercising Trustor's commercially reasonable efforts to obtain any consents, agreements or acknowledgments required of third parties to perfect Beneficiary's security interest in Personal Property consisting of deposit accounts, letter-of-credit rights, investment property, and electronic chattel paper.

Fixture Filing. This instrument covers certain Goods (as defined in the Uniform Commercial Code) which are or are to become fixtures related to the Land and constitutes a "fixture filing" with respect to such Goods executed by Trustor (as "debtor") in favor of Beneficiary (as "secured party") pursuant to *Utah Code Annotated* Section 70A-9a-502, and shall be filed as a fixture filing in the official records of the county recorder of the county in which the Land is located and covers goods which are or are to become fixtures on the Land.

Other Liens. Trustor agrees to keep the Property and any Personal Property free from all other liens either prior or subsequent to the lien created by this instrument, except for Permitted Liens (as defined below). The (i) creation of any other lien on any portion of the Property or on any Personal Property, whether or not prior to the lien created hereby, (ii) assignment or pledge by Trustor of its revocable license to collect, use and enjoy rents and profits from the Property, or (iii) granting or permitting of a security interest in or other encumbrance on the direct or indirect ownership interests in Trustor, shall constitute a default under the terms of this instrument; except that upon written notice to Beneficiary, Trustor may proceed to contest in good faith and by appropriate proceedings any mechanics liens, tax liens or judgment liens with respect to the Property or any Personal Property described herein, provided funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to Beneficiary. As used herein, "Permitted Liens" means (a) liens created by this instrument or the other Loan Documents and (b) other items approved in writing by Beneficiary in its sole discretion.

Indemnification, Duty to Defend and Costs, Fees and Expenses. In addition to any other indemnities contained in the Loan Documents, Trustor shall indemnify, defend and hold Beneficiary harmless from and against any and all losses, liabilities, claims, demands, damages, costs and expenses (including, but not limited to, costs of title evidence and endorsements to Beneficiary's title insurance policy with respect to the Property and reasonable attorney fees and other costs of defense) of this trust which may be imposed upon, incurred by or asserted against Beneficiary, whether or not any legal proceeding is commenced with regard thereto, in connection with: (i) the enforcement of any of Beneficiary's or Trustee's rights or powers under the Loan Documents; (ii) the interpretation of any of the terms and conditions of the Loan Documents, (iii) the protection of Beneficiary's interest in the Property; or (iv) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or on any sidewalk, curb, parking area, space or street located adjacent thereto. If any claim or demand is made or asserted against Beneficiary by reason of any event as to which Trustor is obligated to indemnify or defend Beneficiary, then, upon demand by Beneficiary, Trustor, at Trustor's sole cost and expense, shall defend such claim, action or proceeding in Beneficiary's name, if necessary, by such attorneys as Beneficiary shall approve. Notwithstanding the foregoing, Beneficiary may, in Beneficiary's sole discretion, engage its own attorneys to defend it or assist in its defense and Trustor shall pay the reasonable fees and disbursements of such attorneys.

Failure of Trustor to Act. If Trustor fails to make any payment or do any act as herein provided, Beneficiary or Trustee may, without obligation to do so, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof: (i) make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Beneficiary or Trustee; (iii) pay,

purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended and all losses, liabilities, claims, damages, costs and expenses required to be reimbursed by Trustor to Beneficiary hereunder shall be payable by Trustor immediately upon demand with interest from date of expenditure or demand, as the case may be, at the Default Rate (as defined in the Note). All sums so expended or demanded by Beneficiary and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument.

Event of Default. Any default by Trustor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement, warranty or certification contained in any of the Loan Documents shall, except as provided in the immediately succeeding paragraphs, constitute an "Event of Default".

Notice of Default. A default in any payment required in the Note or any other Loan Document, whether or not payable to Beneficiary, (a "Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given a written notice of such Monetary Default to Trustor and Trustor shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note, from the date of default to the date of cure on amounts owed to Beneficiary) within five (5) Business Days (as defined in the Note) after the date on which Beneficiary shall have given such notice to Trustor.

Any other default under the Note or under any other Loan Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Beneficiary shall have given written notice of such Non-Monetary Default to Trustor and Trustor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Beneficiary shall have given such notice of default to Trustor (or, if the Non-Monetary Default is not curable within such thirty (30) day period, Trustor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default and deposited an amount sufficient to cure such Non-Monetary Default in an escrow account satisfactory to Beneficiary).

In no event shall the notice and cure period provisions recited above constitute a grace period for the purposes of commencing interest at the Default Rate (as defined in the Note).

Substitution of Trustee. Beneficiary and its successors and assigns may for any reason and at any time appoint a new or substitute Trustee without notice to Trustor, without notice to, or the resignation or withdrawal by, the existing Trustee, which written appointment shall be recorded in the official records of the county in which the Land is located. Upon recordation of such appointment, the new or substitute Trustee shall be vested with the same title and with the same powers and duties granted to the original Trustee.

Appointment of Receiver. Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Beneficiary (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and whether or not the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any of the Indebtedness then due.

Foreclosure. Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Beneficiary, become immediately due and payable for all purposes without any notice or demand, except as required by law (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Beneficiary may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Trustee or Beneficiary may, to the extent permitted by applicable law, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Beneficiary may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Trustee is hereby further authorized and empowered, to the extent permitted by applicable law, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Trustee may think best), and all the right, title and interest of Trustor therein, by advertisement or in any manner provided by applicable law, (TRUSTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE, TO THE EXTENT PERMITTED BY APPLICABLE LAW), and to issue, execute and deliver a deed of conveyance, all as then may be provided by applicable law; and Trustee, to the extent permitted by applicable law, shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, pay to Beneficiary or the legal holder of the Indebtedness the amount thereof, including all sums advanced or expended by Beneficiary or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Trustor, the heirs, successors and assigns of Trustor, and all other persons claiming the Property aforesaid, or any part thereof, by, from,

through or under Trustor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

Notwithstanding any other provision set forth herein, the rights and remedies of Beneficiary and the obligations and rights of Trustee in an Event of Default shall be governed by *Utah Code Annotated* Sections 57-1-1 *et seq.*, as amended from time to time.

Prohibition on Transfer/One-Time Transfer: The present ownership and management of the Property is a material consideration to Beneficiary in making the loan secured by this instrument, and Trustor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed) title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a Change in the Proportionate Ownership (as hereinafter defined) of Trustor. Any such conveyance, entering into a Contract to Convey, or Change in the Proportionate Ownership of Trustor shall constitute a default under the terms of this instrument.

"Change in the Proportionate Ownership" means in the case of a corporation, a change in, or the existence of a lien on, the direct or indirect ownership of the stock of such corporation; in the case of a trust, a change in, or the existence of a lien on, the direct or indirect ownership of the beneficial interests of such trust; in the case of a limited liability company, a change in, or the existence of a lien on, the direct or indirect ownership of the limited liability company interests of such limited liability company; or, in the case of a partnership, a change in, or the existence of a lien on, the direct or indirect ownership of the partnership interests of such partnership.

Notwithstanding the foregoing, Beneficiary's consent shall not be required for a Change in the Proportionate Ownership of Trustor provided:

- (A) Principal continues to own, directly or indirectly, free and clear of any security interest, more than a 50% interest in Trustor;
- (B) such transfer would not result in any owner of Trustor, other than the Schultz Family, holding more than a 50% interest in Trustor; and
- (C) each transferee permitted herein and all persons and entities owning (directly or indirectly) an interest in such transferee are not (and have never been):
 - (i) subject to any bankruptcy, reorganization, or insolvency proceedings or any criminal charges or proceedings, or

- (ii) a litigant, plaintiff, or defendant in any suit brought against or by Beneficiary.

"Schultz Family" means the Principal, his spouse, their descendants and their spouses, any trusts or estates for the benefit of said parties, and any entities owned and controlled (ownership and voting interests in excess of 50%) by said parties.

Notwithstanding the foregoing, provided the Note is not in default, upon the prior written request from Trustor, Beneficiary shall not withhold its consent to a one-time transfer of all but not less than all of the Property to a single entity or individual, provided:

- (i) the Property shall have achieved Debt Service Coverage (as hereinafter defined) of at least 1.30 for the last full fiscal year and there are no junior liens on the Property;
- (ii) the transferee or an owner of the transferee (the "Creditworthy Party") has a net worth determined in accordance with generally accepted accounting principles of at least \$225,000,000.00; with cash and cash equivalents of at least \$7,500,000.00 after funding the equity needed to close the purchase and a minimum overall real estate portfolio debt service coverage ratio of 1.30 for the prior twelve (12) month period. In the event that transferee shall satisfy the financial requirements set forth in this subsection (ii), all references to Creditworthy Party in subsections (iii) through (vi) hereafter shall be deemed deleted;
- (iii) the transferee or the Creditworthy Party is experienced in the ownership and management of at least 2,000 market rate Class-A apartment units;
- (iv) the transferee, the Creditworthy Party, and all persons and entities owning (directly or indirectly) an ownership interest in the transferee or the Creditworthy Party are not (and have never been) (a) subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings or (b) a litigant, plaintiff or defendant in any suit brought against or by Beneficiary;
- (v) pursuant to written documentation prepared by and satisfactory to Beneficiary, the transferee assumes all of the obligations and liabilities of Trustor under the Loan Documents, whether arising prior to or after the date of the transfer of the Property, and Beneficiary receives a satisfactory enforceability opinion and authority opinion with respect thereto from counsel approved by Beneficiary;

- (vi) the Creditworthy Party executes Beneficiary's then current forms of Guarantee and Guarantee of Recourse Obligations, the Creditworthy Party and the transferee execute Beneficiary's then current form of Environmental Indemnity Agreement, and Beneficiary receives a satisfactory enforceability opinion and authority opinion with respect to the foregoing from counsel approved by Beneficiary;
- (vii) an environmental report on the Property, at Trustor's or transferee's expense, which meets Beneficiary's then current requirements and is updated to no earlier than ninety (90) days prior to the date of transfer, is provided to Beneficiary at least thirty (30) days prior to the date of transfer and the results of the report are satisfactory to Beneficiary at the time of transfer;
- (viii) Trustor and Principal (a) shall remain liable under the Environmental Indemnity Agreement except for acts or occurrences after the date of transfer of the Property; and (b) shall, except as provided in (a) above, be released from all obligations and liabilities under the Loan Documents;
- (ix) Beneficiary, at Trustor's or transferee's expense, receives an endorsement to its policy of title insurance, satisfactory to Beneficiary insuring Beneficiary's lien on the Property as a first and valid lien subject only to liens and encumbrances theretofore approved by Beneficiary;
- (x) pursuant to written documentation prepared by and satisfactory to Beneficiary, the transferee (a) acknowledges that, in furtherance and not in limitation of clause (v) above, it shall be bound by the representation and warranty contained in the covenant entitled "**Business Restriction Representation, Warranty and Covenant**" set forth in this instrument and (b) certifies that such representation and warranty is true and correct as of the date of transfer and shall remain true and correct at all times during the term of the Note; and
- (xi) the outstanding balance of the Note at the time of the transfer is not more than 50% of the gross purchase price of the Property.

Trustor acknowledges that Beneficiary may hire outside counsel in connection with the requested one-time transfer, and the reasonable cost of such counsel and all other reasonable costs and expenses incurred by Beneficiary in connection with, or otherwise associated with, the requested one-time transfer, including, but not limited to, the cost of title reports, recording and filing fees and any tax required to be paid shall be paid by Trustor, whether or not the one-time transfer is approved.

If Trustor shall make a one-time transfer pursuant to the above conditions, Beneficiary shall be paid a fee equal to one percent (1%) of the then outstanding balance of the Note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of the Note will be required.

No subsequent transfers of the Property shall be allowed, and no Change in the Proportionate Ownership of transferee shall be allowed without Beneficiary's prior written consent. Notwithstanding the foregoing, Trustor and Beneficiary agree that the underlying ownership structure of a particular transferee may cause Beneficiary to determine that the definition of Change in the Proportionate Ownership of such transferee does not adequately address Beneficiary's underlying ownership concerns for such transferee, and accordingly, Beneficiary reserves the right to amend the definition of Change in the Proportionate Ownership as it applies to a particular transferee.

"Debt Service Coverage" means a number calculated by dividing Net Operating Income Available for Debt Service for a fiscal period by the debt service during the same fiscal period under all indebtedness (including the Indebtedness) secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the actual debt service due under all indebtedness secured by any portion of the Property based upon an amortization schedule which is the shorter of the actual amortization schedule or 30 years (whether or not amortization is actually required) and, if an accrual loan, as if interest and principal on such indebtedness were due monthly.

"Net Operating Income Available for Debt Service" means net income (prior to giving effect to any capital gains or losses and any extraordinary items) from the Property, determined in accordance with generally accepted accounting principles, for a fiscal period, plus (to the extent deducted in determining net income from the Property):

- A) interest on indebtedness secured by any portion of the Property for such fiscal period;
- B) depreciation, if any, of fixed assets at or constituting the Property for such fiscal period; and
- C) amortization of costs incurred in connection with any indebtedness secured by any portion of the Property and leasing commissions which have been prepaid;

less:

- D) an amount (positive or negative) to offset any rent averaging adjustment resulting from adherence to FASB-13;

- E) the amortization of free rent and any other tenant concessions and promotional items not deducted in the calculation of net income above;
- F) the amount, if any, by which actual gross income during such fiscal period exceeds that which would be earned from the rental of 92% of the gross leasable area in the Property;
- G) the amount, if any, by which the actual management fee is less than 2.5% of gross revenue during such fiscal period;
- H) the amount, if any, by which the actual real estate taxes are less than \$1,600.00 per unit per annum; and
- I) the amount, if any, by which total actual operating expenses, excluding management fees, real estate taxes and replacement reserves, are less than \$4,800.00 per unit per annum.

All adjustments to net income referenced above shall be calculated in a manner satisfactory to Beneficiary.

Substitute Principal. Notwithstanding anything to the contrary herein or in any Loan Document, the death or incapacity of Principal shall constitute a default under the Loan Documents unless within forty-five (45) days of such individual's death or incapacity, all obligations of such Principal under the Loan Documents, the Guarantee of even date herewith, the Guarantee of Recourse Obligations of even date herewith, and the Environmental Indemnity Agreement (collectively, the "Principal Obligations") are assumed by one or more substitute guarantor(s) (collectively, the "Substitute Principal"), proposed by Trustor and approved by Beneficiary, that:

- (i) has a net worth determined in accordance with generally accepted accounting principles, collectively with the remaining individual Principal(s) or Substitute Principal, of at least \$125,000,000.00 with cash and cash equivalents of at least \$5,000,000.00;
- (ii) has a direct or indirect beneficial interest in Trustor;
- (iii) expressly assumes the Principal Obligations; and
- (iv) is an Acceptable Substitute (as hereinafter defined).

As used herein, "Acceptable Substitute" means a person or entity, including a trust or estate [and, if an entity, all persons having (directly or indirectly) an ownership interest in

such entity] that are not (and have never been) (i) subject to any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings, (ii) a litigant, plaintiff or defendant in any suit brought against or by Beneficiary, (iii) an owner or an entity that held an ownership interest of ten percent (10%) or greater in the owner of real property that was collateral for any loan made by Beneficiary and/or any of its affiliates (each a "Beneficiary Loan") that was sold at foreclosure or similar sale or transferred by deed in lieu thereof or as to which a foreclosure or similar sale proceeding was or is pending, (iv) in default, beyond the applicable cure period, if any, under a Beneficiary Loan, or (v) a party to a modification, forbearance or similar agreement in connection with a default under a Beneficiary Loan.

From and after approval of a Substitute Principal by Beneficiary, all references to "Principal" shall mean or include, as applicable, the Substitute Principal.

Financial Statements. Trustor agrees to furnish to Beneficiary:

- (A) the following financial statements for the Property within sixty (60) days after the close of each calendar year of Trustor (the "Property Financial Statements Due Date"):
 - (i) an unaudited statement of operations for such fiscal year with a detailed line item break-down of all sources of income and expenses, including capital expenses broken down between capital maintenance, common area renovation, and expansion; and
 - (ii) a current rent roll identifying location, leased area, lease begin and end dates, current contract rent, rent increases and increase dates, expense reimbursements, and any other recovery items; and
 - (iii) an operating budget for the current fiscal year; and
- (B) the following financial statements that Beneficiary may, in Beneficiary's sole discretion, require from time to time within twenty (20) days after receipt of a written request from Beneficiary (the "Requested Financial Statements Due Date"):
 - (i) an unaudited balance sheet for Trustor as of the last day of Trustor's most recently closed fiscal year; and
 - (ii) an unaudited balance sheet for Principal as of the last day of Principal's most recently closed fiscal year; and
 - (iii) an unaudited statement of cash flows for Trustor as of the last day of Trustor's most recently closed fiscal year; and
 - (iv) an unaudited statement of cash flows for Principal as of the last day of Principal's most recently closed fiscal year.

Furthermore, Trustor shall furnish to Beneficiary within 20 days after receipt of a written request from Beneficiary such reasonable financial and management information in the possession of, or accessible to, Trustor which Beneficiary determines to be useful in Beneficiary's monitoring of the value and condition of the Property, Trustor, or Principal.

The Property Financial Statements Due Date and the Requested Financial Statements Due Date are each sometimes hereinafter referred to as a "Financial Statements Due Date".

Notwithstanding the foregoing, in no event shall a Financial Statements Due Date for a particular financial statement be prior to the sixtieth (60th) day following the close of the fiscal year covered by such financial statement.

If audited, the financial statements identified in sections (A)(i), (A)(ii), and (B)(i) through (B)(iv) above, shall each be prepared in accordance with generally accepted accounting principles by a certified public accountant reasonably satisfactory to Beneficiary. All unaudited statements shall contain a certification by the manager of Trustor stating that they have been prepared in accordance with generally accepted accounting principles and that they are true and correct. The expense of preparing all of the financial statements required above shall be borne by Trustor.

Trustor acknowledges that Beneficiary requires the financial statements and information required herein to record accurately the value of the Property for financial and regulatory reporting.

In addition to all other remedies available to Beneficiary hereunder, at law and in equity, if any financial statement, additional information or proof of payment of property taxes and assessments is not furnished to Beneficiary as required in this section entitled "**Financial Statements**" and in the section entitled "**Taxes and Special Assessments**", within thirty (30) days after Beneficiary shall have given written notice to Trustor that it has not been received as required,

- (X) interest on the unpaid principal balance of the Indebtedness shall as of the applicable Financial Statements Due Date or the date such additional information or proof of payment of property taxes and assessments was due, accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in the Note) plus one percent (1%) per annum (the "Increased Rate"); and
- (Y) Beneficiary may elect to obtain an independent appraisal and audit of the Property at Trustor's expense, and Trustor agrees that it will, upon request, promptly make Trustor's books and records regarding the Property available to Beneficiary and the person(s) performing the appraisal and audit (which obligation Trustor agrees can be specifically enforced by Beneficiary).

If any portion of the loan term is interest-only and the Increased Rate is imposed during such interest-only portion of the loan term, then the amount of the payments due under the Note during the time in which the Increased Rate is in effect shall be changed to an amount which is sufficient to reflect the payment of interest at the Increased Rate. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the date (the "Receipt Date") on which all of the financial statements, additional information and proof of payment of property taxes and assessments (as requested by Beneficiary) shall be furnished to or made available to Beneficiary as required. Commencing on the Receipt Date, interest on the unpaid principal balance of the Note shall again accrue at the Interest Rate and the payments due thereafter shall be changed to an amount which is sufficient to reflect the payment of interest on the Note at the Interest Rate.

If the Increased Rate is imposed after any interest-only portion of the loan term (or if there is no interest-only portion of the loan term), then the amount of the payments due under the Note during the time in which the Increased Rate is in effect shall be changed to an amount which is sufficient to reflect the Increased Rate with no change in the amortization of the unpaid principal balance. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until the Receipt Date. Commencing on the Receipt Date, interest on the unpaid principal balance of the Note shall again accrue at the Interest Rate with no change in amortization, and the payments due during the remainder of the loan term shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate.

Notwithstanding the foregoing, Beneficiary shall have the right to conduct an independent audit at its own expense at any time.

Compliance With Water Regulations. Trustor agrees to abide by all the statutes of the state in which the Property is located and the rules and regulations of any and all federal, state and local authority having jurisdiction over the use and distribution of water or water resources, and shall not transfer, sell, assign or relinquish the water rights now held or hereafter acquired covering the Property without the written consent of the Beneficiary.

Property Management. The management company for the Property shall be reasonably satisfactory to Beneficiary. Any change in the management company without the prior written consent of Beneficiary shall constitute a default under this instrument.

Earthquake. If the Property is damaged by an earthquake during the term of the Indebtedness:

(A) Beneficiary may require a new seismic analysis to be performed at Trustor's expense, and

(B) Trustor shall perform repair and retrofit work, satisfactory to Beneficiary, which results in (i) the complete repair of the Property and (ii) a subsequent seismic analysis verifying that the Property meets "Minimum Seismic Criteria" (as defined below). Such work shall be commenced and completed as soon as possible and in any event within one (1) year of the earthquake.

Without limiting Trustor's obligation to cause the Property to satisfy Minimum Seismic Criteria, during any period of time in which the Property does not satisfy Minimum Seismic Criteria, Trustor shall provide Beneficiary with evidence of, and maintain, "Earthquake Insurance" (as defined below). Earthquake Insurance shall be provided on a replacement cost, agreed amount basis, with no co-insurance provision, and shall include loss of rents insurance equal to twelve (12) months' rent or business income insurance for one hundred percent (100%) of the annual gross earnings from business derived from the Property.

As used herein, "Minimum Seismic Criteria" means that both (i) the Specified Loss Percentage for the Property is less than thirty percent (30%), and (ii) the Loan Amount plus Specified Loss is less than or equal to ninety percent (90%) of the market value of the Property as determined by Beneficiary in its sole discretion.

As used herein, "Earthquake Insurance" means a policy satisfactory to Beneficiary with a deductible of no greater than five percent (5%) of the "Replacement Cost" (as defined below) and in an amount calculated as follows: (i) the Loan Amount plus (ii) the Specified Loss minus (iii) ninety percent (90%) of the market value of the Property as determined by Beneficiary in its sole discretion.

As used herein, "Replacement Cost" means the estimated total cost, determined by Beneficiary in its sole discretion, to construct all of the improvements as if the Property were completely unimproved (not including the cost of site work, utilities and foundation).

As used herein, "Loan Amount" shall mean the total principal amount advanced under the Note.

As used herein, "Specified Loss" means the Specified Loss Percentage multiplied by the Replacement Cost.

As used herein, "Specified Loss Percentage" means an estimate produced by Beneficiary's seismic consultant of the earthquake damage to the Property, expressed as a percentage of Replacement Cost.

Deposits. To assure the timely payment of real estate taxes and special assessments (including personal property taxes, if appropriate), upon the occurrence of an Event of

Default, Beneficiary shall thence forth have the option to require Trustor to deposit funds with Beneficiary, in monthly or other periodic installments in amounts estimated by Beneficiary from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Beneficiary, shall be insufficient to pay any of said expenses, Trustor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Beneficiary to be applied to the payment of such real estate taxes and special assessments and, at the option of Beneficiary after default, the Indebtedness. Beneficiary may deduct from any amounts so held, any fees, costs or expenses incurred in connection with holding such amounts and/or paying amounts to taxing authorities or other parties, including, without limitation any fees, costs or expenses associated with paying amounts via e-check or electronically.

Notices. Any notices, demands, requests and consents permitted or required hereunder or under any other Loan Document shall be in writing, may be delivered: (a) personally, (b) by certified mail with postage prepaid, (c) by reputable courier service with charges prepaid, or (d) by email to Trustor at mikes@castlecreekhomes.com. Any notice or demand sent to Trustor by certified mail or reputable courier service shall be addressed to Trustor at 1877 West 4000 South, Roy, UT 84067, or such other address in the United States of America as Trustor shall designate in a notice to Beneficiary given in the manner described herein. Any notice sent to Beneficiary by certified mail or reputable courier service shall be addressed to The Northwestern Mutual Life Insurance Company to the attention of the Real Estate Investment Department at 720 East Wisconsin Avenue, Milwaukee, WI 53202, or at such other addresses as Beneficiary shall designate in a notice given in the manner described herein. Any notice given to Beneficiary shall refer to the Loan No. set forth above. Any notice or demand hereunder shall be deemed given when received, and any notice sent to Trustor via email shall be deemed received at the time sent, as recorded on the device from which the sender sent the email, if sent on a Business Day prior to 6:00 p.m. Central time, or on the next Business Day, if sent after 6:00 p.m. Central time. Any notice or demand which is rejected, the acceptance of delivery of which is refused or which is incapable of being delivered during normal business hours at the address specified herein or such other address designated pursuant hereto shall be deemed received as of the date of attempted delivery.

Modification of Terms. Without affecting the liability of Trustor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Note, without notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with

the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Beneficiary may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

Exercise of Options. Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Beneficiary is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Beneficiary of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

Assignment. Beneficiary may assign all or any part of the loan secured by this instrument and the Loan Documents to a subsidiary or affiliate of Beneficiary, or to another lender at no cost to Trustor. In such event, upon reasonable prior notice to Trustor, said lender shall have the right to enter the Property for additional environmental review or testing as such lender may deem necessary. In addition, Beneficiary may pledge all or any part of the loan secured by this instrument and the Loan Documents to a third party.

Nature and Succession of Agreements. Each of the provisions, covenants and agreements contained herein shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, and assigns of the parties hereto, respectively, and the term "Beneficiary" shall include the owner and holder of the Note.

Legal Enforceability. No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Trustor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

Limitation of Liability. Notwithstanding any provision contained herein to the contrary, the personal liability of Trustor shall be limited as provided in the Note.

Miscellaneous. Time is of the essence in each of the Loan Documents. The remedies of Beneficiary as provided herein or in any other Loan Document or at law or in equity shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall occur; and neither the failure to exercise any such right or remedy nor any acceptance by Beneficiary of payment of Indebtedness in default shall in any event be construed as a waiver or release of any right or remedy. Neither this instrument nor any other Loan Document may be modified or terminated orally but only by agreement or discharge in writing and signed by Trustor and Beneficiary. If any of the provisions of any Loan Document or the application thereof to any persons or circumstances shall to any extent

be invalid or unenforceable, the remainder of such Loan Document and each of the other Loan Documents, and the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of each of the Loan Documents shall be valid and enforceable to the fullest extent permitted by law.

Waiver of Jury Trial. Trustor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by Trustor, Beneficiary or any other person relating to (i) the obligations secured hereby and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents or the Environmental Indemnity Agreement, or (b) to which Beneficiary is a party.

Captions. The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

Governing Law. This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

Integration. PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, TRUSTOR IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

*(Remainder of page intentionally left blank;
Trustor's signature on following page)*

IN WITNESS WHEREOF, this instrument has been executed by the Trustor as of the day and year first above written.

ARLO APARTMENTS, LLC,
a Utah limited liability company

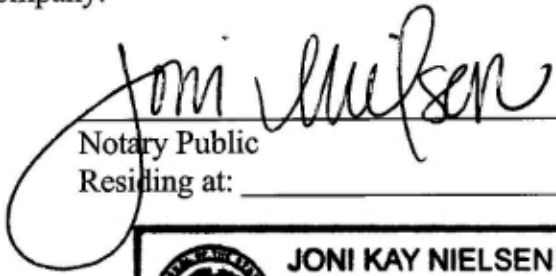
By: Mike Schultz, Inc.
a Utah corporation
Its: Manager

By: 
Mike Schultz, President

STATE OF Utah)
COUNTY OF Weber) ss.
)

The foregoing instrument was acknowledged before me on June 4, 2024, by Mike Schultz, as President of Mike Schultz, Inc., a Utah corporation, the Manager of Arlo Apartments, LLC, a Utah limited liability company.

My commission expires _____


Notary Public
Residing at: _____



This instrument was prepared by Caroline S. Spongberg, Attorney for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.

EXHIBIT "A"

(Description of Property)

The following described tract of land in Davis County, State of Utah, to-wit:

PARCEL 1:

LOT 7, HERITAGE LANE COMMERCIAL PLAZA PUD - FIRST AMENDED,
Syracuse City, Davis County, Utah, according to the Official Plat thereof.

LESS AND EXCEPTING:

A portion of Lot 7, Heritage Lane Commercial Plaza PUD - First Amended, situate in the Northwest Quarter of Section 15, Township 4 North, Range 2 West, Salt Lake Base and Meridian, said parcel also located in Syracuse City, Davis County, Utah. Being more particularly described as follows:

Beginning at Northwest Corner of said Lot 7, said point being North 89°58'46" East 956.68 feet along the section line (NAD83 bearing South 89°40'54" East between the Northwest and North Quarter Corner of said Section 15, per the Davis County Township Reference Plat) and South 00°01'14" East 308.02 feet from the Northwest Corner of said Section 15; and running thence South 89°59'49" East 31.95 feet along the Northerly line of said Lot 7; thence South 81.12 feet; thence South 21°01'08" East 6.83 feet; thence South 00°00'11" West 4.56 feet; thence West 34.41 feet to the Westerly line of said Lot 7; thence North 00°00'22" East 92.06 feet along the Westerly line of said Lot 7 to the point of beginning.

PARCEL 1A:

Non-exclusive right of ingress and egress for vehicular and pedestrian traffic as set forth in that certain Cross Access and Parking Easement Agreement dated May 14, 2024 by Arlo Apartments, LLC, a Utah limited liability company and Heritage Lane Commercial Plaza A Non-Profit Corporation, a Utah corporation, recorded May 21, 2024, as Entry No. 3572359, in Book 8507, at Page 553, of Public Records.

Tax ID No. 12-957-0010