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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

HARVEST UT OWNER LLC,
(Trustor)
to

COTTONWOOD TITLE INSURANCE AGENCY, INC.,
(Trustee)

for the Benefit of

MESA WEST CORE LENDING FUND, LLC
(Beneficiary)

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

Dated: As of May 26, 2022
Location: 580 North 300 West,
Salt Lake City, UT 84103
Tax ID: 08-36-205-047

THIS INSTRUMENT IS A DEED OF TRUST WITHIN THE MEANING OF UTAH CODE ANN. § 57 1-19. THIS INSTRUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH §§ 70A-9A-501(1)(A) AND 70A-9A-502(2) AND (3) OF THE UTAH UNIFORM COMMERCIAL CODE AND IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AS A "FIXTURE FILING," AS DEFINED IN UTAH CODE ANN. § 70A-9A-102(40) AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES. THIS INSTRUMENT IS ALSO TO BE INDEXED AS A FINANCING STATEMENT UNDER THE NAMES OF TRUSTOR, AS "DEBTOR," AND BENEFICIARY, AS "SECURED PARTY."

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (together with all renewals, replacements, amendments, restatements or modifications hereof from time to time, this “**Security Instrument**”) is made as of May 26, 2022, by HARVEST UT OWNER LLC, a Delaware limited liability company, as Trustor (“**Trustor**”), to COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation, as Trustee (“**Trustee**”), for the benefit of MESA WEST CORE LENDING FUND, LLC, a Delaware limited liability company (together with its successors and assigns, “**Beneficiary**”).

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the County of Salt Lake, State of Utah, described on Exhibit A attached hereto (the “**Land**”), together with all right, title, interest and privileges of Trustor in and to the following property, rights, title, interests and estates:
- (a) All streets, ways, roads and alleys used in connection with or pertaining to such real property, and together with all development rights or credits, air rights, water, water rights and water stock related to such real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the Land, and all appurtenances, easements, rights and rights of way appurtenant or related thereto (collectively with the Land, the “**Real Property**”);
 - (b) All buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, renovations, replacements and other improvements and fixtures now or hereafter located on the Real Property (collectively, the “**Improvements**”);
 - (c) All apparatus, equipment, inventory and appliances used in the operation or occupancy of the Real Property, including, without limitation, all other property of every kind and nature, whether tangible or intangible, whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant thereto and usable in connection with the present or future operation and occupancy of the Real Property and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Real Property, or appurtenant or affixed thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Real Property (collectively, the “**Equipment**”), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment that may be subject to any “security interest” as defined under the Uniform Commercial Code as in effect in the State of Utah (as amended and recodified from time-to-time, the “**UCC**”);
 - (d) All awards and payments, including interest thereon, that may heretofore and hereafter be made with respect to the Real Property, Improvements, or Equipment, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a

change of grade, or for any other injury to or decrease in the value thereof (collectively, the “**Awards and Payments**”);

- (e) To the extent assignable by Trustor, all leases (“**Leases**”), license agreements, franchise agreements, concession agreements and other occupancy agreements of any nature, whether oral or written or implied by course of conduct, now or hereafter affecting all or any part of the Real Property, the Improvements, the Equipment or the Awards and Payments and all other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct or any activity upon or in or relating to the Real Property, the Improvements, the Equipment or the Awards and Payments, and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the “**Operating Agreements**”);
- (f) All rents, issues, income and profits, including, without limitation, charges for parking, maintenance, taxes and insurance, deficiency rents and damages following default, all proceeds payable under any policy of insurance covering loss of rent resulting from any destruction or damage to the Real Property, Improvements or Equipment, and all other rights and claims of any kind which Trustor may have against any tenant or any other occupant of the Real Property, Improvements or Equipment, all rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), all receivables, customer obligations and other obligations now existing or hereafter arising or created out of the sale, sublease, license, franchise, concession or other grant of the right of the use and occupancy of Real Property, or Improvements, or rendering of services by Trustor or any operator or manager of the Real Property, Improvements or Equipment (collectively, the “**Rents**”);
- (g) All proceeds of and any unearned premiums on any insurance policies covering the Real Property, Improvements or Equipment (regardless as to whether required hereby) including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Real Property, Improvements or Equipment (collectively, the “**Insurance Proceeds**”);
- (h) The rights, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents or Insurance Proceeds and to commence any action or proceeding to protect the interest of Beneficiary or Trustee therein (collectively, the “**Claims**”); in each case, subject to and in accordance with the terms of this Security Instrument, the Loan Agreement and applicable law, provided that the foregoing shall not restrict Trustor from exercising such rights subject to the terms of the Loan Agreement;
- (i) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing, including, without limitation, the Insurance Proceeds and Awards and Payments, into cash or liquidation claims;
- (j) All accounts, escrows, documents, instruments, chattel paper, notes, drafts, letters of credit, interest rate hedge, cap, swap or similar agreement, title insurance policies, all reserves and accounts established under that certain Loan Agreement, dated as of the date hereof between Trustor, as borrower, and Beneficiary, as lender (together with all replacements, amendments, restatements or modifications thereof from time to time, the “**Loan Agreement**”), all permits, consents, approvals, licenses, authorizations and other

rights given or granted by or obtained from any governmental entity with respect to the Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents or Insurance Proceeds, all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect thereto, all loan funds held by Beneficiary, whether or not disbursed, all funds deposited with Beneficiary or another depository pursuant to the Loan Agreement or any other Loan Document, all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related thereto or any portion thereof, together with all books, claims, deposits and general intangibles, as the foregoing are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, franchise agreements, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, renovation or other work upon the Real Property or Improvements), approvals, actions, refunds, rebates or credits of real estate taxes and assessments (and any other governmental impositions related to the Real Property Improvements or Equipment), and causes of action that now or hereafter relate to, are derived from or are used in connection thereto, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the “**Intangibles**”);

- (k) All water and water rights, ditches and ditch rights, reservoirs and storage rights, wells and well rights, springs and spring rights, groundwater rights (whether tributary, nontributary or not nontributary), water contracts, water allotments, water taps, shares in ditch or reservoir companies, and all other rights of any kind or nature in or to the use of water, which are appurtenant to, historically used on or in connection with, or located on or under the Land, together with any and all easements, rights of way, fixtures, personal property, contract rights, permits or decrees associated with or used in connection with any such rights;
- (l) The Interest Rate Protection Agreement, including, but not limited to, all “accounts”, “chattel paper”, “general intangibles” and “investment property” (as such terms are defined in the UCC as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;
- (m) All of Borrower’s right, title and interest in, to and under any declarations of covenants, conditions, restrictions and easements (or instruments of similar purpose or effect) affecting all or any part of the Land, whether now existing or hereafter executed or recorded, including, without limitation, the HOA Declaration; provided, however, in each case, that Lender shall have no liability under such covenants, conditions and restrictions, unless and until Lender forecloses on the real property; and
- (n) All interests or estate which Trustor may hereafter acquire in the Real Property Improvements, Equipment, Awards and Payments, Operating Agreements, Rent or Insurance Proceeds, and all additions and accretions thereto, and the proceeds of any of the foregoing.

The above listing of specific rights or property shall not be interpreted as a limitation of general terms. The Real Property, Improvements, Equipment, Awards and Payments, Operating Agreements, Rents, Insurance Proceeds and Intangibles are referred to herein collectively as the “**Property**”.

TO HAVE AND TO HOLD the above granted and described Property unto Trustee for the use and benefit of Beneficiary, and its successors and assigns, forever.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Trustor makes this Security Instrument for the purpose of securing the following obligations (“**Secured Obligations**”):
- (a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured by Deed of Trust (together with all extensions, renewals, replacements, amendments, restatements or modifications hereof from time to time, “**Note**”), dated as of the date hereof, in the maximum principal amount of NINETY MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$90,275,000.00) executed by Trustor, as borrower, and payable to Beneficiary, as lender; and
 - (b) Payment and performance of all covenants and obligations of Trustor under this Security Instrument; and
 - (c) Payment and performance of all covenants and obligations on the part of Trustor under (i) the Loan Agreement; and (ii) each other Loan Document to which Trustor is a party, but expressly excluding the Environmental Indemnity Agreement and the Carveout Guaranty; and
 - (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Security Instrument; and
 - (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term “**obligations**” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, exit fees, default interest, protective advances, reimbursements, penalties, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. Capitalized terms not specifically defined herein have the meaning given such terms in the Loan Agreement. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and reborrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** As security for the Secured Obligations, Trustor hereby irrevocably assigns to Beneficiary all of Trustor’s right, title and interest in, to and under: (a) all Operating Agreements;

and (b) the Rents, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Operating Agreements, including under the Leases (“**Payments**”). This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Operating Agreements (including all Leases) and Payments is not contingent upon, and may be exercised without possession of, the Property.

- 3.2 **GRANT OF LICENSE.** Subject to the terms and conditions of that certain Cash Management Agreement, dated as of the date hereof, by and between Trustor and Beneficiary (together with all replacements, amendments, restatements or modifications thereof from time to time, “**Cash Management Agreement**”), and subject to the terms of the Loan Agreement, Beneficiary confers upon Trustor a license (“**License**”) to collect, retain and use the Payments as they become due and payable and otherwise act as owner and landlord under the Operating Agreements and in respect of the Property, until the occurrence of an Event of Default (as hereinafter defined). Upon the occurrence and during the continuance of an Event of Default (and to the extent not prohibited by applicable law), at Beneficiary’s option in its sole and absolute discretion, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the Loan Agreement and the other Loan Documents without further notice and without taking possession of the Property; provided, however, that the License shall be automatically reinstated once the applicable Event of Default has been waived in writing by Beneficiary. Trustor hereby irrevocably authorizes and directs the lessees under the Operating Agreements and any operator and manager of the Property to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any Rents, Payments or other sums which may at any time become due or payable from the Property or under the Operating Agreements, or for the performance of any of the lessees’ or occupants’ undertakings under the Operating Agreements or any other agreements pertaining to the Property, and the lessees, occupants, managers, operators, licensors shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees, occupants, managers, operators, licensors, and others from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Operating Agreements (including the Leases) or under other agreements pertaining to the operation or management of the Property; or (c) responsible or liable for any waste committed on the Property by any persons under any of the Operating Agreements for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, occupant, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder, or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Operating Agreements, unless such failure constitutes willful misconduct or gross negligence by Beneficiary.
- 3.4 **COVENANTS.** Subject to the terms and conditions of the Loan Agreement, Trustor shall (a) timely perform all obligations in all material respects that are required to be performed by the Trustor under the Operating Agreements and (b) enforce all rights of Trustor under the terms of the Operating Agreements. Without in any way limiting the requirement of Beneficiary’s consent hereunder, any sums received by Trustor in consideration of any termination (or the

release or discharge of any lessee) modification or amendment of any Operating Agreement shall be applied as provided in the Cash Management Agreement (if applicable).

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter owns (collectively, the “Collateral”):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above) or (ii) the Improvements (which real property and Improvements are collectively referred to herein as the Property); together with all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to Article 3); all inventory, accounts, cash receipts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Property or any business now or hereafter conducted thereon by Trustor; all rights of Trustor under any interest rate hedge, cap, swap or similar agreement; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary or another depository pursuant to the Loan Agreement or any other Loan Documents; all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related to the Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a “fixture” under applicable law, this Security Instrument constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC, as amended or recodified from time to time.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral (except for Permitted Encumbrances), and Trustor has not delivered or authorized any other person to deliver any financing statement covering any of the Collateral to any other person or entity (except with respect to Permitted Encumbrances); and (c) Trustor’s principal place of business is located at the address shown in Section 7.14.
- 4.3 **RIGHTS OF BENEFICIARY.** In addition to Beneficiary’s rights as a “Secured Party” under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary’s rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding

the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9-620 and 9-621 as amended or recodified from time to time, or other applicable law.

4.4 **RIGHTS OF BENEFICIARY ON EVENT OF DEFAULT.** Upon the occurrence and during the continuance of an Event of Default under this Security Instrument, then in addition to all of Beneficiary's rights as a "Secured Party" under any Loan Document, the UCC or otherwise to the fullest possible extent permitted by law or equity:

- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, subject to the rights of the tenants under the Leases, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; and (iii) sell, assign and deliver at any place and in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales;
- (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral; and
- (c) Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9-621 as amended or recodified from time to time, or other applicable law.

4.5 **POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and take any other action required of Trustor herein; provided, however, that the same shall not be exercised by Beneficiary unless Trustor fails to satisfy any obligation herein and such failure shall continue for five (5) Business Days after notice of such failure is delivered to Borrower; provided, further, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Article 4 or the other Loan Documents, so long as no Event of Default exists under this Security Instrument or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty or as provided in the Title Policy, and except for the Permitted Encumbrances, (i) Trustor lawfully holds and possesses, or will hold and possess, fee simple title to the Property and (ii) this Security Instrument is a first priority lien on the Property.
- 5.2 **TAXES AND ASSESSMENTS.** Trustor shall pay, prior to delinquency, all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein in accordance with the Loan Agreement, subject to Trustor's right to contest same as set forth in the Loan Agreement. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation, subject to Trustor's right to contest same as set forth in the Loan Agreement; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income, organization or existence. Without limitation, if at any time any law is enacted which deducts from the value of real property, for taxation purposes, any lien thereon, or changes in any way the laws now in force for the taxation of mortgages, deeds of trust or debts secured thereby, or the manner of collection of any such taxes so as to affect any interest of Beneficiary under this Security Instrument then Trustor shall pay such tax if it may lawfully do so. If Trustor is not permitted by applicable law to pay such tax, or if such payment would violate any applicable law, then the whole of the principal sum secured by this Security Instrument, together with accrued interest thereon, at the option of Beneficiary, shall become due and payable, without Trustor being required to pay any Prepayment Premium, penalty or fee, or any Breakage Fee, within one hundred fifty (150) days following Beneficiary's written notice to Trustor.
- 5.3 **INTENTIONALLY BLANK.**
- 5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due in accordance with the Loan Agreement.
- 5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Subject to Trustor's rights under Section 11.7 of the Loan Agreement and except for the Permitted Encumbrances, Trustor shall (i) immediately discharge any lien not approved by Beneficiary in writing or expressly permitted under the Loan Agreement that has or may attain priority over this Security Instrument and (ii) pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto.
- 5.6 **PERFORMANCE OF OTHER AGREEMENTS.** Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by Trustor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto, at the time and in the manner provided in the Loan Agreement and the other Loan Documents.
- 5.7 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Trustor covenants: (a) to insure the Property in accordance with Section 5.1 of the Loan Agreement and (b) maintain the Property in accordance with Section 8.20 of the Loan Agreement.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims, except for the Permitted Encumbrances. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property or Collateral and of any condemnation offer or action (in each case, to the extent Trustor received written notice thereof).

5.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**

- (a) Trustee accepts this trust when this Security Instrument is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in its opinion, such action would be likely to involve it in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. 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 Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. TRUSTOR WILL, FROM TIME TO

TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE FOR, FROM AND AGAINST, ANY AND ALL LIABILITY AND REASONABLE EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF TRUSTEE BUT EXPRESSLY EXCLUDING ANY LIABILITY OR EXPENSES RELATED TO TRUSTEE'S ILLEGAL ACTS, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- (d) 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 Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Trustor shall pay all reasonable Trustee's fees and reimburse Trustee for out-of-pocket expenses actually incurred in the administration of this trust, including out-of-pocket attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Security Instrument, including, without limitation, any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the proper exercise of the rights, remedies or powers granted to Beneficiary in this Security Instrument; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Security Instrument; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property after an Event of Default or from any other act or omission of Beneficiary in managing the Property after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.
- (b) Trustor indemnifies Beneficiary and Trustee (and their respective successors, assigns and participants) for, from and against, and holds Beneficiary and Trustee (and their respective successors, assigns and participants) harmless from, all losses, damages (other than punitive, special or consequential damages unless paid by Beneficiary to a third party), liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal

expenses, cost of evidence of title, cost of evidence of value, and other expenses (collectively, "Losses") which either actually incurs, regardless of whether caused in whole or in part by the negligence or strict liability of Beneficiary or Trustee: (i) by reason of this Security Instrument; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or required by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations of Trustor contained in any other document related to the Property; provided the foregoing indemnification obligations shall not apply to any Losses to the extent directly caused by Beneficiary's or Trustee's gross negligence, willful misconduct, or illegal acts. The above obligation of Trustor to indemnify and hold harmless Beneficiary and Trustee (and their respective successors, assigns and participants) shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Security Instrument, except with respect to Losses suffered or incurred after Beneficiary takes title or possession of the Property.

- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately after written demand by Beneficiary or Trustee (or their respective successors, assigns or participants) together with interest thereon from the date of such demand at the rate of interest then applicable to the principal balance of the Note as specified therein.

5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests or other equity interests in Trustor (except as otherwise permitted in the Loan Agreement and except for the Permitted Encumbrances), shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.

5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement with Trustor or the applicable obligor extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Security Instrument upon the Property and Collateral.

- 5.14 **RECONVEYANCE AND RELEASE.** If and when the Secured Obligations have been paid and otherwise performed in full, and no further advances are to be made under the Loan Agreement, Beneficiary shall, upon the request of Trustor and at Trustor's sole cost and expense, provide to Trustee a certificate of satisfaction and release of the Property and deliver to Trustee this Security Instrument and the Note, and upon payment by Trustor of Trustee's fees and all other sums owing to it under this Security Instrument, Trustee shall reconvey and release the Property without warranty to the person or persons legally entitled thereto. Such person or persons must pay all costs of recordation. The recitals in the reconveyance of any facts will be conclusive as to all persons. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.
- 5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Security Instrument or by the proceeds of any loan secured by this Security Instrument.
- 5.16 **LEASING.** Trustor shall comply with the requirements of the Loan Agreement with respect to leasing, including, without limitation, those contained in Section 8.3 of the Loan Agreement.
- 5.17 **RIGHT OF INSPECTION.** Subject to the rights of the tenants under the Leases, Beneficiary, its agents and employees, may enter the Property at any reasonable time, after reasonable notice to Trustor, for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Event of Default" shall mean "Event of Default", as defined in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES.** At any time after an Event of Default shall have occurred and is continuing, Beneficiary and Trustee shall each have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any Event of Default of Trustor and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Beneficiary or Trustee under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Security Instrument, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (v) to employ counsel, accountants, contractors and other appropriate persons.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by

injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application (Trustor hereby waiving any right to any hearing or notice of hearing prior to the appointment of a receiver);
- (e) To enter upon, possess, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property, to make, terminate, enforce or modify Operating Agreements of the Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Event of Default and of its election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof 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 Trustee, Trustor or Beneficiary may purchase at the sale;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Beneficiary determines in its sole discretion, to the extent not prohibited by applicable law.
- (h) Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of

resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all reasonable costs, fees and expenses in connection with the sale, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale, subject to applicable law: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all reasonable costs and expenses incurred by Beneficiary or any receiver under Section 6.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any license, franchise, tenancy, lease or option or a subordination of the lien of this Security Instrument.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary, within fifteen (15) days after demand, all reasonable costs and expenses actually incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and actual, out-of-pocket attorneys' and paralegals' fees, whether internal or external and whether incurred in litigation or not) with interest from the date of notice of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all reasonable Trustee's fees hereunder

and shall reimburse Trustee for all reasonable expenses actually incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.

- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** After the occurrence and during the continuation of an Event of Default, Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, subject to the terms and provisions of the Loan Agreement, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Operating Agreements and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence and during the continuation of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 6.8 **TRUSTEE'S SALE.** Upon the occurrence of an Event of Default, if Beneficiary should elect to have the Property sold by the Trustee under the Trustee's power of sale, the Trustee shall execute a written notice of such default and of Beneficiary's election to cause the Property to be sold to satisfy the Secured Obligations. As a condition precedent to any sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof 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 Beneficiary, may purchase at the sale.
- 6.9 **TRUSTEE APPLICATION OF PROCEEDS.** Trustee shall apply the proceeds of the sale to payment of: (1) the costs and expenses of exercising the power of sale and of conducting the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest as provided herein 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 County Clerk of the county in which the sale took place.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Security Instrument and to the Property and such further rights and agreements are incorporated herein by this reference.
- 7.2 **NO RELATIONSHIP.** The relationship between Trustor and Beneficiary is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Trustor, and no term or condition of the Loan Agreement, the Note, this Security Instrument or any other Loan Document shall be construed so as to deem the relationship between Trustor and Beneficiary to be other than that of debtor and creditor.
- 7.3 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 7.4 **NO RELIANCE ON BENEFICIARY OR TRUSTEE; RELIANCE ON TRUSTOR.** The general partners, members, principals and (if Trustor is a trust) beneficial owners of Trustor, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Trustor and Beneficiary are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Trustee's or Beneficiary's expertise, business acumen or advice in connection with the Property. Trustor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Trustee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 6 of the Loan Agreement and Section 2(a) of the Environmental Indemnity Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Trustee, that such reliance existed on the part of Trustee prior to the date hereof, that the warranties and representations are a material inducement to Trustee in making the Loan; and that Trustee would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 6 of the Loan Agreement and Section 2(a) of the Environmental Indemnity Agreement.
- 7.5 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Security Instrument as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.6 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Security Instrument as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Security Instrument or any other obligation of that married person secured by this Security Instrument may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 7.7 **WAIVER OF MARSHALING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives (i) all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("**Other Property**") marshaled upon any foreclosure of this Security Instrument or on a foreclosure of any other security for any of the Secured Obligations, and (ii) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the

Property. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

- 7.8 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Property" means all and any part of the Property and any interest in the Property.
- 7.9 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.9 does not waive or modify the provisions of Section 5.12.
- 7.10 **EXECUTION IN COUNTERPARTS.** This Security Instrument may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.
- 7.11 **Governing Law.** THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK BY BENEFICIARY, AND MADE BY BENEFICIARY IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN SHALL BE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA; PROVIDED, HOWEVER, THAT AT ALL TIMES THE PROVISIONS HEREIN FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF UTAH (OR, WITH RESPECT TO PERFECTION OF SECURITY INTERESTS UNDER ARTICLE 9 OF THE UCC, AS MAY OTHERWISE BE PROVIDED IN SECTION 9-301 TO 9-307 OF THE UCC). TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT.
- 7.12 **INCORPORATION.** Exhibit A, as attached, is incorporated into this Security Instrument by this reference.
- 7.13 **EXCULPATION.** Section 2.11 of the Loan Agreement is hereby incorporated in this Security Instrument as if fully set forth herein.
- 7.14 **NOTICES.** All notices, demands, requests, consents, approvals, waivers or other communications required or permitted to be given pursuant to the provisions of this Security Instrument shall be in writing and shall be considered as properly given if delivered to the appropriate party in the manner and to the address set forth in Section 11.4 of the Loan Agreement; provided that the address of Trustee shall be as follows:

Cottonwood Title Insurance Agency, Inc.
1996 East 6400 South #120
Salt Lake City, UT 84121

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Property or to Trustor naming Beneficiary, "Lender" or any similar designation as addressee, or which is reasonably likely to affect the ability of Trustor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

- 7.15 **CONFLICT WITH LOAN AGREEMENT.** In the event of any conflict between the terms and requirements of this Security Instrument and the Loan Agreement, the terms and requirements of the Loan Agreement shall prevail.

ARTICLE 8. STATE SPECIFIC PROVISIONS

- 8.1 **PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Article 8 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 8 shall control and be binding.
- 8.2 **ELECTION TO FORECLOSE AS A MORTGAGE.** Upon the occurrence of an Event of Default, Beneficiary shall have the option to foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be fixed by the court. The proceeds or avails of a sale pursuant to the foreclosure of this Security Instrument as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the Secured Obligations with interest at the rate set forth in the Note, and third to the person so entitled. Beneficiary may purchase all or any part of the Property at such sale.
- 8.3 **REMEDIES NOT EXCLUSIVE.** The provisions of Articles 6 shall not be deemed to preclude the exercise by Beneficiary of any remedies set forth in any other Article of this Security Instrument.
- 8.4 **INDEMNIFICATION OBLIGATIONS NOT SECURED.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, no indemnification obligation of Trustor shall be deemed to be secured by this Security Instrument.
- 8.5 **UTAH STATUTE OF FRAUDS – NOTICE TO TRUSTOR.** PURSUANT TO UTAH CODE. ANN. §25-5-4, TRUSTOR IS HEREBY NOTIFIED 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.
- 8.6 **UTAH UNIFORM ASSIGNMENT OF RENTS ACT.** Article 3 of this Security Instrument is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. §§ 57-26-101 et seq., 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.


- 8.7 **NO VIOLATION OF APPLICABLE LAW.** Notwithstanding anything to the contrary in this Security Instrument, all rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded or enforced under the provisions of any applicable law.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Trustor has executed this Security Instrument as of the day and year set forth above.

TRUSTOR:

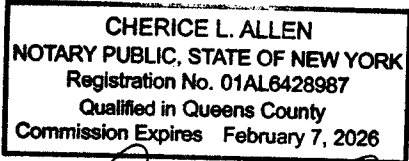
HARVEST UT OWNER LLC,
a Delaware limited liability company

By: 
Name: Adam Siegman
Title: Authorized Signatory

STATE OF New York)
COUNTY OF Queens) ss.

On May 17, 2022, before me, Cherice Allen, a Notary Public in and for said state, personally appeared Adam Siegman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



New York, Cherice Allen
Notary Public in and for said State

My commission expires: February 7, 2026

EXHIBIT A

DESCRIPTION OF PROPERTY

[Attached]

Legal Description

PARCEL 1:

A parcel of land lying and situate in the Northeast quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows:

Beginning at a point on the East line of 300 West Street and the Southwest corner of Lot 2, Marmalade District, recorded January 15, 2014 in Book 2014P at Page 9, in the office of the Salt Lake County Recorder; thence North 00°01'28" East 513.17 feet along the East right of way line of 300 West Street; thence North 89°59'33" East 201.90 feet along the South right of way line of 600 North Street; thence South 00°01'15" West 177.50 feet; thence North 89°59'33" East 7.71 feet; thence South 00°01'15" West 161.36 feet; thence North 89°56'19" West 90.22 feet; thence South 00°14'04" West 174.74 feet; thence North 89°51'18" West 118.76 feet to the point of beginning.

PARCEL 1A:

A nonexclusive easement, appurtenant to Parcel 1 above, for vehicular and pedestrian ingress and egress, as defined and disclosed in that certain Master Declaration of Covenants, Conditions and Restrictions of Marmalade Block Development, recorded August 4, 2014 as Entry No. 11892206 in Book 10250 at Page 5468.

PARCEL 1B:

An easement for the construction, reconstruction, maintenance, repair, replacement, and removal of footings attached to a retaining wall as defined and disclosed in that certain Easement recorded March 23, 2017, as Entry No. 12501445, in Book 10540, at Page 8110.

PARCEL 1C:

A non-exclusive right-of-way and easement, appurtenant to a portion of Parcel 1 above, for utility purposes, as defined and disclosed in that certain Easement Agreement recorded February 24, 2014 as Entry No. 11808936 in Book 10213 at Page 1795.

PARCEL 2:

The leasehold estate created in that certain of Lease to Occupy Public Property executed by and between Salt Lake City Corporation, a Utah municipal corporation and WW SLC Owner VIII, LLC, a Delaware limited liability company, as disclosed by the Memorandum of Lease to Occupy Public Property recorded March 22, 2019 as Entry No. 12954847 in Book 10763 at Page 717, in and to the following:

A parcel of land lying and situate in the northeast quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows:

Commencing at a point on the South line of 600 North Street and the Northeast corner of Lot 3, Marmalade District, recorded January 15, 2014 in Book 2014P at Page 9, in the office of the Salt Lake County Recorder; thence South 89°59'33" West 53.68 feet along the South right of way line of 600 North Street to the point of beginning; thence South 89°59'33" West 148.22 feet; thence South 00°01'28" West 513.17 feet along the East right of way line of 300 West Street; thence South 89°51'18" East 39.37 feet; thence South 1.50 feet; thence North 89°51'18" West 43.37 feet; thence North 00°01'28" East 37.12 feet; thence West 14.00 feet; thence North 00°01'28" East 7.00 feet; thence East 14.00 feet; thence North 00°01'28" East 211.74 feet; thence West 10.50 feet; thence North 00°01'28" East 15.25 feet; thence East 10.50 feet; thence North 00°01'28" East 181.64 feet; thence West 13.50 feet; thence North 00°01'28" East 7.00 feet; thence East 13.50 feet; thence North 00°01'28" East 60.91 feet; thence North 89°59'33" East 152.22 feet; thence South 6.00 feet to the point of beginning.

ALSO:

A parcel of land lying and situate in the Northeast quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows:

Commencing at the Southwest corner of Lot 2, Marmalade District, recorded January 15, 2014 in Book 2014P at Page 9, in the office of the Salt Lake County Recorder; thence South 89°51'18" East 118.76 feet along the South line of said Lot 2; thence North 00°14'04" East 113.18 feet along the Southerly exterior of said Lot 2 to the point of beginning; thence North 00°14'04" East 8.00 feet along the Southerly exterior of said Lot 2; thence East 3.51 feet; thence South 8.00 feet; thence West 3.55 feet to the point of beginning.

Parcel Identification No.: Parcel 1: 08-36-205-047