

**Prepared by  
and After Recording Return To:**

Casey Bradley  
Symetra Life Insurance Company  
Mortgage Loan Department  
PO Box 84066  
Seattle, WA 98124-8466

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**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage" or "Security Instrument") is made as of March 15, 2024 by MONOMOY PROPERTIES AL 2 SPV, LLC, a Delaware limited liability company ("Owner"), whose address is c/o Monomoy Properties LLC, 10100 Santa Monica Blvd., Suite #2400, Los Angeles, CA 90067, for the benefit of SYMETRA LIFE INSURANCE COMPANY, an Iowa corporation ("Lender"), whose mailing address is Mortgage Loan Department, PO Box 84066, Seattle, WA 98124-8466.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

**THIS MORTGAGE ONLY SECURES GUARANTY AGREEMENTS AND IS NOT TAXABLE.**

**WHEREAS**, Monomoy Finance 3 SPV, LLC, a Delaware limited liability company ("Borrower"), and Lender have entered into that certain Loan and Security Agreement of even date herewith (as amended, restated, supplemented, or otherwise modified from time to time, the "Loan and Security Agreement") in connection with a loan (the "Loan") evidenced by, among other documents, that certain Real Estate Note of even date herewith made by Borrower payable to the order of Lender and maturing on March 15, 2044, as the same may be amended, extended or modified (the "Note"). Owner and Borrower are collectively referred to herein as "Obligors";

**WHEREAS**, Contemporaneously herewith, Owner and certain other Property-Owner Guarantors (as defined in the Loan and Security Agreement; and together with Borrower and Owner, the "Credit Parties") have executed and delivered to Lender certain guaranty agreements (each, a "Guaranty") guaranteeing the full and timely payment and performance of certain obligations as more particularly described in each Guaranty; and

**WHEREAS**, Owner, as an affiliate of Borrower, is receiving good and valuable benefit, the sufficiency of which are hereby acknowledged, from Lender entering into the Loan and Security Agreement with Borrower.

**1. Granting Clause:** Owner hereby grants, bargains, sells, aliens and conveys to Lender in fee simple, for the purpose of securing the obligations described herein, all now existing or hereafter acquired right, title and interest of Owner in, to, under and derived from the following (all of the following property described in this Section is called the "Property"):

SEE ATTACHED EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY THIS  
REFERENCE FOR A FULL LEGAL DESCRIPTION OF THE PROPERTY (the "Land")

together with all now existing or hereafter acquired right, title and interest of Owner in, to, under all buildings, structures, fixtures, additions, extensions and other improvements now or hereafter erected or placed thereon, and all water, water rights and stock, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging now or hereafter used or enjoyed with the Land, or any part thereof, and the reversion and reversions, remainder and remainders thereof, and all other estate, property and rights hereinafter described, including without limitation, (a) all land lying within the bed and/or the right of way of any streets, ways, alleys, water courses and roads adjoining the Land, and all access rights and easements pertaining to the Land; (b) all the lands, privileges, water, water rights and stock, air rights, development rights, zoning rights and similar rights,

oil and gas rights, royalties, minerals and mineral rights belonging or in any way pertaining to the Land; (c) all fixtures, materials, machinery, fittings and other property now or hereafter attached to or used in the operation of the Land, which shall be deemed part of the real property encumbered hereby and not severable wholly or in part without material injury to the property (including, but not limited to, heating and incinerating apparatus and equipment, boilers, generating equipment, piping and plumbing fixtures, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, carpeting, elevators, escalators, partitions, window shades, blinds, screens, furnishings of public spaces, halls and lobbies, and shrubbery and plants; (d) all existing and future leases, subleases, concessions, licenses, franchises, occupancy agreements or other agreements, written or oral, relating to any use or occupancy of the Property, together with any guaranties of such leases, any security deposits and letters of credit securing performance of such leases, and other security for such leases (all such rights and interests being referred to herein as the "**Leases**"); (e) all income, profits and revenue from any business conducted on the Property, and all income, proceeds, royalties, rents, issues, revenues and profits from the Leases, including all prepaid rent thereunder, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, all proceeds from any rights and claims of any kind which Owner may have against any tenant under the Leases or any occupants of the property, and proceeds payable under any policy of insurance covering loss of rents (all of the above are hereafter collectively referred to as the "**Rents**"); the term "Rents" shall include minimum rents, additional rents, percentage rents, common area maintenance charges, lease termination payments, purchase option payments, all proceeds payable as a result of a tenant's exercise of an option to purchase the Property, payments in settlement of litigation or under any Lease or in settlement of any dispute regarding rent payments and all payments in lieu of rents including without limitation liquidated damages or other compensation for a tenant's default; (f) any and all rights of Owner in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property; (g) goods, appliances, equipment, inventory, furniture, furnishings, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the Property; (h) contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the design, construction, supply or installation of the existing or any future improvements or fixtures on the Property, any and all rights of Owner in, to or under any architect's contracts, engineer's contracts or construction contracts relating to the design or construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith; (i) all trademarks, trade names, copyrights, computer software and other intellectual property used by Owner in connection with the Property; (j) all proceeds derived from the sale, conveyance or transfer of the Property or any part thereof, including any deposit received by Owner in the nature of an option payment or earnest money deposit with respect to any prospective transfer of the Property and all proceeds payable as a result of a tenant's exercise of an option to purchase the Real Property; (k) all compensation, awards, damages, causes of action and proceeds (including condemnation and insurance proceeds and any interest on the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding, fire, earthquake or other casualty, injury or decrease in the value of the Property, and any claims, causes of action and rights arising from damage to the Property, including without limitation, claims for construction defects, and any refund due on account of payment of real estate taxes, assessments or other charges and reasonable attorney fees and costs incurred by Lender related to the collection of any such award or payment; (l) all rights now or hereafter held by Owner as a declarant under any condominium declaration or any declaration of covenants, conditions and restrictions affecting the Property; (m) all contracts and agreements pertaining to or affecting the Property including management and operating agreements and any and all reserve agreements, including without limitation reserves for debt service, taxes, insurance or lease termination fees; and (n) all additions, accessions, replacements, products, substitutions, and proceeds of any of the foregoing.

**2. Security Agreement.** Owner grants to Lender a security interest in that portion of the Property which is not real property to secure payment and performance of all of the Secured Obligations (defined below). This Security Instrument shall constitute a Security Agreement as that term is used in the Alabama Uniform Commercial Code ("**UCC**") or other law applicable to the creation of liens or security interests in personal property with respect to any of the Property that is not real property but is described herein, or in any way connected with the use and enjoyment of the Property, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as specified in the UCC or at law. Owner authorizes Lender to file one or more financing statements under the UCC with Owner as Debtor and Lender as Secured Party (with their addresses as set forth in the preamble of this Security Instrument) to perfect or give public notice of the security interest granted herein. Owner and Lender agree that the filing of a financing statement in the records normally having to do with personal property shall not be construed as in anywise derogating from or impairing the lien of this Security Instrument. Owner will promptly notify Lender in writing of any change in (a) the Owner's name, (b) the Owner's type of legal entity, (c) the jurisdiction under which the Owner's business organization is formed or organized, or (d) the address of the Owner's chief executive office or principal residence or of any additional places of Owner's business.

**3. Obligations Secured.** This Security Instrument is given for the purpose of securing the following obligations (the "**Secured Obligations**");

(a) the payment of the indebtedness (the "**Loan**") evidenced by a Real Estate Note of even date hereof in the principal amount of \$66,500,000.00, made by Borrower (the "**Note**"), payable to the order of Lender at the times, in the manner and with interest as therein set forth, and any extensions, renewals, modifications, restatements or substitutions of the Note, the last installment under the Note being due on April 15, 2029, which is the date of maturity of the debt secured by this Security Instrument;

(b) the performance of each agreement of Obligors herein or in the other Loan Documents;

(c) the payment of all sums expended or advanced by Lender under or pursuant to the terms hereof, together with interest as herein provided, including without limitation any and all sums advanced by the Lender in order to preserve the Property or preserve its security interest in the Property in accordance with the terms of the Loan Documents; and

(d) the payment of such additional loans or advances as hereafter may be made to Borrower, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Security Instrument.

As used in this Security Instrument, the "**Loan Documents**" shall mean the Note, this Security Instrument, the Environmental Agreement, the Loan and Security Agreement of even date herewith, by and between Borrower and Lender (the "**Loan and Security Agreement**"), and the other documents and instruments evidencing or securing the Loan, as the same may be amended, modified, replaced or restated from time to time, including without limitation, all other Mortgages, Deeds of Trust, Deeds to Secure Debt or other security instruments (collectively "**Other Mortgages**") which state that such Other Mortgages secure the Loan. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all other indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the other indebtedness may, if provided in the applicable loan instruments, provide for revolving or open end loans and advances, all of which shall be secured by this Mortgage.

**4. Performance of Obligations.** Borrower or Owner, as the case may be shall timely pay all sums when due pursuant to the Note and the Loan Documents without deduction or credit for taxes, insurance and other charges paid by Borrower or Owner, as the case may be, and strictly comply with all the terms and conditions of the Loan Documents to which they are a party.

## **5. Warranties**

**5.1 Warranty of Title.** Owner represents and warrants to and covenants with Lender that (a) Owner has good and marketable title to an indefeasible fee simple estate in the Land and the improvements thereon, and unencumbered title to the Rents and Leases, (b) the Property is free and clear of any liens, encumbrances, easements, assessments, security interests, claims or defects of any kind, nature or description except those recorded easements, declarations, restrictions, reservations and covenants, if any, that are set forth in the schedule of exceptions to coverage approved by Lender in the title insurance policy insuring Lender's interest in the Property, and real property taxes for the current year, a lien not yet payable (the "**Permitted Exceptions**"), (c) neither the real property taxes nor any Permitted Exceptions are delinquent or in default, (d) Owner has the right to mortgage the Property for the benefit of Lender, and the right to grant a security interest in the personal property security. Owner will warrant and defend title to the Property and will defend the validity and priority of the lien of this Security Instrument and the security interest granted herein against any claims or demands, except for the Permitted Exceptions.

**5.2 Warranties Regarding Leases.** Owner represents and warrants to and covenants with Lender that (a) Owner has performed all of the material covenants of Owner as landlord under the Leases; (b) all of the Leases identified by Owner in any certified rent roll provided by Owner to Lender identifying Leases in place as of the date hereof (the "**Current Leases**") are to the best of Owner's knowledge valid and enforceable according to their terms in all material respects, are in full force and effect and are unmodified except as disclosed in writing to Lender; (c) Owner has the right to assign its rights under the Rents and Leases to Lender as security for the Secured Obligations; (d) the tenants under the Current Leases are in possession of the premises leased under their respective leases and except as disclosed in writing by Owner to Lender are paying rent as provided therein; (e) Owner has made no prior assignment of the Rents or Leases except as security for indebtedness that has been fully repaid as of the date hereof, and (f) Owner has not collected any of the Rents due and owing under the Leases more than one month in advance of their due date.

**6. Prohibited Liens.** Owner shall not permit any governmental or statutory liens (including tax and mechanic's and materialmen's liens) to be filed against the Property except for real property taxes and assessments not yet due and liens expressly

permitted by the Loan Documents. Owner shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof, or its interest as lessor under the Leases except pursuant to this Security Instrument. Owner shall have the right to contest any mechanic's and materialmen's liens on the Property in good faith by appropriate proceedings so long as (a) no Event of Default (as defined hereinafter) has occurred and is continuing; (b) Owner posts any bond or other security as and when required as a condition of pursuing such contest; (c) Owner commences such contest prior to such lien becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such bond stays the foreclosure and enforcement of such lien; and (e) Owner pays any lien within ten (10) days following the resolution of such contest. If Lender is named as a party in any suit to foreclose a lien described herein then Owner shall pay all reasonable out-of-pocket costs and fees incurred by Lender in defending such suit.

**7. Payment of Fees, Taxes and Other Liens and Assessments; Contest.** Owner shall pay all filing, registration and recording fees, stamp and documentation taxes, and other fees, taxes, duties, imposts, and other reasonable out-of-pocket charges incident to, arising from, or in connection with the making, disbursement and administration of the Loan and the preparation, execution, delivery or recording of any Loan Document. Owner shall also pay or cause its tenants to pay the real property taxes and any assessments with respect to the Property prior to delinquency unless otherwise expressly agreed to in writing by Lender. After timely notice to Lender, Owner shall have the right to contest any real property tax or special assessment on the Property by appropriate proceedings diligently pursued so long as (a) no Event of Default has occurred; (b) Owner makes any payment or deposit or posts any bond as and when required as a condition of pursuing such contest; (c) Owner commences such contest prior to such tax or assessment becoming delinquent, and continuously pursues same in good faith with due diligence; (d) such contest or any bond furnished by Owner stays the foreclosure and enforcement of any lien securing the payment of any such tax or assessment; and (e) Owner pays any tax or assessment within ten (10) days following the resolution of such contest. All other encumbrances, charges, fees, and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Security Instrument, shall be paid when due and shall not be in default beyond any applicable notice and cure period. On request, Owner shall furnish to Lender receipts or other evidence of payment of these items reasonably satisfactory to Lender.

**8. Maintenance; No Waste.** Owner shall protect and preserve the Property and maintain it in good condition and repair, ordinary wear and tear from proper use and casualty alone excepted. Owner shall not commit or knowingly permit any intentional physical waste of the Property, or suffer or permit any condition to exist which will (i) increase the risk of fire or other hazard to the Property, or (ii) invalidate or allow cancellation of any insurance policy covering the Property. Owner shall perform all of Owner's material obligations under any declarations, covenants, bylaws, rules or other documents governing the use, ownership or occupancy of the Property.

**9. Alterations, Removal and Demolition.** Owner shall not, nor permit tenants or others to, demolish any building on the Property or alter any foundations or structural portions of exterior walls of such buildings without Lender's prior written consent. Owner shall not remove any fixture or other item or property which is part of the Property and the removal of which would materially adversely affect the value of the Property, without Lender's prior written consent unless the fixture or item of property is immediately replaced by an article of equal value and utility owned by Owner free and clear of any lien or security interest, unless such item is no longer reasonably necessary for the efficient use and operation of the Property as currently used, provided, however, that nothing herein shall limit the rights of tenants under their Leases

**10. Completion, Repair and Restoration.** Owner shall, at its sole cost, or cause its tenant to, promptly complete or repair and restore in good workmanlike manner, lien-free and in compliance with all applicable laws and permits, any building or improvement on the Property which may be constructed or damaged or destroyed. Notwithstanding the foregoing, if the damage or destruction is the result of an insured casualty, if no Event of Default has occurred and is continuing, and if Lender has exercised any option it may have under Section 20 hereof to apply for a purpose other than rebuilding any portion of the insurance proceeds paid by reason of the casualty, then Owner's obligation to repair or rebuild shall be limited to such repair and rebuilding as may reasonably be accomplished with such insurance proceeds as are made available to Owner plus the deductible amounts on the applicable insurance policies.

**11. Compliance with Laws.** Owner represents and warrants that the Land is zoned for Owner's proposed use, and is in present compliance with all zoning and subdivision laws, regulations, codes, rules, and ordinances applicable thereto in all material respects. Owner shall assure that at all times the Land constitutes one or more legal lots capable of being conveyed without violation of any subdivision laws, ordinances, regulations, codes, rules, or other applicable laws relating to the division or separation of real property. Owner shall comply with all federal, state and local laws, ordinances, codes, rules, regulations, covenants, conditions, declarations, and restrictions affecting the Property in all material respects and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, declarations, and restrictions, in any material respect. Without limiting the generality of the foregoing, Owner represents and covenants that to Owner's actual knowledge, the Property is in present compliance in all material respects with, and at all times shall comply in all material respects with, as applicable, the (i)

Americans With Disabilities Act of 1990 (42 U.S.C §§ 12101, et seq.), and (ii) the Federal Controlled Substances Act (21 U.S.C. §§ 801 *et seq.*), each as amended from time to time, as well as any rules and regulations adopted pursuant thereto. At no time shall Owner permit any part of the Property to be used or occupied for purposes of a business that may not lawfully operate under applicable local, state or federal law, including but not limited to the foregoing (i) and (ii).

**12. Impairment of Property; No Condominium.** Owner shall not, without Lender's prior written consent, change the general nature of the use of the Property, initiate, acquire or permit any change in any public or private restrictions (including a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the value of the Property or Lender's lien or security interest in the Property. In addition, Owner will not subject the Property or any portion thereof to a condominium regime or structure or other common interest community or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Owner providing Lender with such title insurance endorsements and other documents as Lender may require.

**13. Inspection of Property.** Lender or its authorized representative shall have the right to inspect the Property and its condition and use at all reasonable times after reasonable notice to Owner, subject to the rights of tenants of the Property.

**14. Owner's Defense of Property.** Owner shall appear in and defend (with counsel reasonably satisfactory to Lender) any action or proceeding which may affect the Property or the rights or powers of Lender.

**15. Lender's Right to Protect Property.** Lender may (but is not obligated to) commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Lender if Owner fails to undertake such actions after reasonable notice from Lender. Lender may pay, purchase, contest or compromise any encumbrance, charge or lien which in its judgment appears to be prior or superior to the lien of this Security Instrument and Owner shall promptly reimburse Lender therefor. If Owner fails to make any payment or do any act required under the Loan Documents after the expiration of applicable notice and cure periods, including without limitation, payment of taxes and assessments and maintenance of insurance on the Property, Lender, without any obligation to do so, but without releasing Owner from any obligations under the Loan Documents, may upon written notice to Owner make the payment or cause the act to be performed in such manner and to such extent as Lender may deem reasonably necessary to protect Lender's interest in the Property. Lender is authorized to enter upon the Property for such purposes upon reasonable prior notice and in all events subject to the rights of tenants, except in the case of an emergency. In exercising any of these powers Lender may incur such expenses, in its reasonable discretion, it deems necessary, all of which shall be payable by Owner and be secured by this Security Instrument.

**16. Repayment of Lender's Expenditures.** Owner shall pay within seven (7) business days after written notice from Lender all sums expended by and all costs and expenses incurred by Lender in taking any actions or exercising any remedies pursuant to the Loan Documents or in responding to any subpoena or other discovery request relating in any way to Lender's status as holder of this Security Instrument or to the process of closing or administering the Loan, including without limitation reasonable attorneys' fees, appraisal and inspection fees, and the costs of title reports. Expenditures and advances by Lender shall bear interest from the date of such advance or expenditure at the rate specified in the Note (which shall be the default rate thereunder if an Event of Default is then pending), shall constitute advances made under this Security Instrument and shall be secured by and have the same priority as the lien of this Security Instrument. If Owner fails to pay any such expenditures, advances, costs and expenses and interest thereon, Lender may, at its option, without foreclosing the lien of this Security Instrument, commence an independent action against Owner for the recovery of the expenditures, costs, and advances, and may disburse any undisbursed loan proceeds to pay such costs, advances and expenditures.

**17. Due on Sale or Transfer; Change of Control.**

**17.1 General Rule – Prohibition on Conveyance or Change of Control.** Owner understands that Lender will have the opportunity to examine, and is entitled to rely upon, the creditworthiness, financial strength, reputation, experience and managerial ability of Owner (and its owners) with respect to owning, leasing and operating the Property, in approving the Loan to Borrower and the obligations of Owner under the Loan Documents, and will continue to rely on Owner (and its owners) as a means of preserving the value of the Property as security for the Loan. If (i) the Property or any part thereof or interest therein is conveyed, transferred, leased (other than a space lease without option to purchase), assigned, or otherwise alienated (each a "Conveyance"), or (ii) there is a Change of Control (defined below) of Owner or of any guarantor of the Loan that is a corporation, partnership, limited liability company, association, trust, unincorporated organization, or business entity; (an "Entity Guarantor") without the prior written consent of Lender (unless consent is not required pursuant to the terms of the Loan Documents), then, except as otherwise expressly provided below, and regardless of whether or not an Event of Default shall otherwise have occurred

and be continuing, such event shall constitute an Event of Default, and Lender may, at its option, declare the then outstanding principal balance evidenced by the Note plus accrued interest thereon, and any applicable late fee or prepayment fee, immediately due and payable. In the case of an Owner that is a revocable trust, the revocation of such trust shall be deemed a Change of Control for purposes hereof. Any joint venture agreement, partnership agreement, declaration or revocation of trust, real estate installment sale contract, option agreement or other agreement (other than a space lease without option to purchase) whereby any other person or entity other than Owner may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits of the Property, shall, in each case, be deemed to be a Conveyance or Change of Control for the purposes of this paragraph, and shall require prior written consent from Lender. Any request to Lender for approval of a Change of Control shall be accompanied by copies of any proposed transfer instruments and a processing fee to Lender in the amount specified below. The withdrawal or expulsion of any general partner from Owner (if owner is a partnership) shall not in any way affect the liability of the withdrawing or expelled general partner for all obligations of Owner hereunder or under the Note. If Owner consists of more than one person or entity who hold title to the Property as tenants in common, no tenancy-in-common agreement or similar agreement governing the rights and obligations of the owners with respect to the Property that may be recorded against the Property as of the date hereof or hereafter, or of which Lender otherwise has knowledge, shall in any way limit or impair Lender's rights under this Deed of Trust, including without limitation Lender's rights upon any transfer of any fee interest in any portion of the Property. Owner hereby waives any right of partition with respect to the Property and covenants not to file any action for partition of the Property until all of the Secured Obligations are paid in full.

**17.2 "Change of Control" Defined.** Except as otherwise expressly provided herein, a **"Change of Control"** for purposes hereof means the transfer over the term of the Loan of more than 49% of the equity interests, directly or indirectly, in Borrower or Owner or an Entity Guarantor, or any change in the identity of any party designated by the Borrower or Owner or Entity Guarantor (as applicable) as having direct managerial control over such Borrower or Owner or Entity Guarantor (including but not limited to a general partner of a general or limited partnership, a manager or managing member of a limited liability company, or a trustee of a trust). Notwithstanding the foregoing or anything to the contrary herein, none of the following shall constitute a Change of Control: (i) any transfers of direct or indirect ownership interests in Borrower or Owner or Entity Guarantor for estate planning purposes as described in Section 17.3 below, (ii) transfers of any interests in MONOMOY PROPERTIES LLC, a Delaware limited liability company (**"MP"**) (provided that such entity continues to be managed directly by the Manager(s) of such entity that are in place as of the date hereof pursuant to such entity's governing organizational documents or becomes managed directly by IMPERIAL CAPITAL ASSET MANAGEMENT, LLC, a Delaware limited liability company (**"ICAM"**) or GREAT ELM CAPITAL MANAGEMENT, INC., a Delaware corporation (**"GECM"**) or MONOMOY CRE, LLC, a Delaware limited liability company (**"CRE"**) (for so long as CRE continues to be managed directly by GECM), and provided that the requirements of Section 17.8 below are satisfied in full to the extent that such requirements are applicable), (iii) transfers of any interests in MONOMOY PROPERTIES II LLC, a Delaware limited liability company (**"MPII"**) (provided that such entity continues to be managed directly by the Manager(s) of such entity that are in place as of the date hereof pursuant to such entity's governing organizational documents or becomes managed directly by GECM or ICAM or CRE (for so long as CRE continues to be managed directly by GECM), and provided that the requirements of Section 17.8 below are satisfied in full to the extent that such requirements are applicable), (iv) transfers of any interests in MONOMOY UPREIT, LLC, a Delaware limited liability company (the **"UpREIT"**), provided that such entity continues to be managed directly by the REIT (as defined below) or becomes managed directly by GECM or ICAM or CRE (for so long as CRE continues to be managed directly by GECM), and provided that the requirements of Section 17.8 below are satisfied in full to the extent that such requirements are applicable), (v) transfers of any interests in MONOMOY PROPERTIES REIT, LLC, a Delaware limited liability company (the **"REIT"**), provided that such entity continues to be managed directly by the Board of Managers (as such term is defined in the certain Second Amended and Restated Limited Liability Company Operating Agreement of the REIT that is dated May 4, 2022) that are in place as of the date hereof or becomes managed directly by GECM or ICAM or CRE (for so long as CRE continues to be managed directly by GECM), and provided that the requirements of Section 17.8 below are satisfied in full to the extent that such requirements are applicable, (vi) any initial public offering of any entity that owns (directly or indirectly) Borrower or Owner and any subsequent transfers of publicly traded shares in such entity, and (vi) other transfers permitted by the Loan Documents). If Owner is a natural person and dies, the transfer of the Property because of such death shall not be deemed a Conveyance for purposes hereof. If Owner is a trust, a change in the make-up of the trustees of the trust as the result of death shall not constitute a Conveyance or Change of Control requiring written consent of Lender, but any change in the identities of the trustees of a Borrower that is a trust shall require prior written consent of Lender if the change is not the result of death, and Borrower must provide Lender with written notice prior to or promptly following the addition of any new trustee of a Borrower that is a trust regardless of the reason for such addition. Notwithstanding the foregoing, and subject to the requirements of Section 17.8 below (to the extent that the such requirements are applicable), (1) changes in the direct or indirect ownership interests (including pledges and any foreclosure thereof) in MONOMOY PROPERTIES REIT, LLC, a Delaware limited liability company (the **"REIT"**) or MONOMOY UPREIT, LLC, a Delaware limited liability company (the **"UpREIT"**) shall not constitute

transfers that are subject to (or count towards) the aforementioned 49% limitation, and (2) a subsequent sale of all of the same interest that had been previously sold in a prior transaction shall not count towards the foregoing 49% threshold (by way of example, if 20% of the indirect interests in Owner are sold to a third party and then the entire same 20% interest is subsequently sold again, these two transfers shall only count as a transfer of 20%, not 40%). Further, Borrower hereby agrees to provide a then-current and complete and accurate organizational chart within ten (10) business days upon written request from Lender (provided that Lender shall not request such organizational chart more often than once in any calendar year as long as (aa) no Event of Default has occurred and is continuing, and (bb) Lender has no reasonable grounds to believe that a transfer has occurred without Lender's prior consent where such consent is required by Section 17 hereof).

**17.3 Transfer of Interest for Estate Planning Purposes.** Natural persons may, for estate planning purposes, transfer their direct or indirect interest in Owner or Borrower, or an Entity Guarantor, notwithstanding that such transfer may be of a Change of Control, if such transfer is to immediate family members or lineal descendants, or to entities controlled by or trusts for the benefit of, immediate family members or lineal descendants of the transferor; provided that if such transfer is a Change of Control then (1), Lender must receive written notice of the transfer within ten (10) business days following the transfer, (2) the liability of Borrower under the Note and of any guarantors under their guaranty of Borrower's obligations shall remain in full force and effect, and (3) managerial control over Owner, Borrower and any Entity Guarantor (if applicable) shall remain acceptable to Lender in Lender's reasonable discretion (it being agreed that such managerial control shall be acceptable to Lender if vested in UpREIT, REIT, ICAM, GECM or CRE (for so long as CRE continues to be managed directly by GECM)).

**17.4 Death of Guarantor.** The death of a natural person who is a guarantor of the Loan (whether or not such person owns any interest in Borrower) shall constitute an Event of Default under the Loan, unless the obligations of such decedent are assumed in writing by a replacement guarantor satisfactory to Lender (or Lender is otherwise provided with a new guaranty from a satisfactory guarantor in substitution for the guaranteed obligations of the deceased) no later than ninety (90) days after such guarantor's death. In addition, the termination of a trust that is a guarantor of the Loan shall constitute an Event of Default under the Loan unless such guarantor's obligations are assumed in writing by a replacement guarantor satisfactory to Lender (or Lender is otherwise provided with a new guaranty from a satisfactory guarantor in substitution for the guaranteed obligations of such trust) before termination of such Trust. Lender will not unreasonably withhold its consent to a replacement guarantor whose creditworthiness, liquidity and financial strength satisfy Lender's then-applicable underwriting standards. In addition, Lender will not unreasonably withhold its consent to an additional extension of 90 days to the 90-day period referenced above for the delivery of a satisfactory replacement guaranty upon the death of a guarantor or the termination of a trust that is a guarantor. Borrower shall pay all of Lender's reasonable out of pocket costs associated with processing of the foregoing transactions.

**17.5 Other Transfers of Interest on Death.** The transfer, upon the death of a natural person, of an interest in Borrower (whether or not such transfer would otherwise be a Change of Control) shall not constitute a Change of Control, nor require the notification to or consent of Lender, nor require the payment of any fee, unless such deceased natural person is (i) the Owner, (ii) the Borrower, (iii) a guarantor of the Loan, or (iv) a party designated by the Owner or Borrower or an Entity Guarantor (as applicable) as having direct managerial control over such Owner Borrower or Entity Guarantor.

**17.6 No Discharge of Obligated Parties.** No Conveyance or Change of Control or other transfer of any interest in the Property shall operate to discharge or diminish in any way the liability of Owner or any guarantor with respect to the Loan Documents except as otherwise expressly provided herein.

**17.7 Assumption of Loan.** Notwithstanding the foregoing provisions of this Section 17, and provided no Event of Default has occurred, Owner shall have a two-time only right upon prior written notice to Lender and payment of all Lender's reasonable out-of-pocket expenses plus an assumption fee equal to one percent (1%) of the original principal amount of the Note to convey the entire interest in the Property held by all persons comprising Owner to a transferee whose creditworthiness, financial strength, reputation, experience and property management ability with respect to the ownership, operation and leasing of properties similar to the Property (together with that of any new proposed guarantors of the Loan) satisfy Lender's then-applicable underwriting standards, which approval shall not be unreasonably withheld or delayed. If Lender withholds its approval because of the proposed transferee's or proposed new guarantors' lack of creditworthiness, reputation, experience, property management ability or financial strength or other reasonable basis which leads Lender to reasonably believe the Loan or the security would be impaired, Lender shall not be deemed to have unreasonably withheld its approval. Any transferee must fully assume Owner's obligations under the Note and the Loan Documents, and Owner and any guarantors of the Loan shall remain fully bound after the transfer; provided that upon Lender's approval of a conveyance of the Property to a transferee unaffiliated with Owner, Lender's acceptance of any

required replacement guaranty(ies) and the assumption of the Loan as provided herein, Owner and any guarantors shall be released from all liability under the Loan Documents and all liability for repayment of the Loan. Owner shall pay for an endorsement to Lender's title policy (or, in Lender's discretion, a new title policy if such an endorsement is not available) insuring that this Security Instrument remains a first and prior lien on the Property and shall pay all reasonable out-of-pocket expenses and fees, including reasonable outside counsel legal fees, incurred in connection with the transfer and assumption. Any approval given by Lender shall not constitute approval of any other or future Conveyance or Change of Control. If ownership of the Property or any part thereof or interest therein becomes vested in a person or an entity other than Owner, whether or not Lender has given written approval, Lender may deal with such successor or successors in interest with reference to this Security Instrument and the Loan, in the same manner as with Owner, without in any way diminishing or discharging Owner's obligations. In addition to the loan assumption fee payable upon an approved conveyance of the Property and assumption of the Loan, Owner shall pay to Lender a processing fee in the amount of \$3,500.00 in consideration of, and as a precondition to, the review by Lender of the proposed conveyance and assumption. Such sum is payable regardless of whether Lender ultimately approves the proposed transfer and is in addition to any loan assumption fee payable upon the closing of an assumption transaction. As a condition of approval of any request for a loan assumption, Owner shall provide evidence reasonably satisfactory to Lender that any tenant with a right of first refusal to acquire the Property has waived such right with respect to the proposed transfer. **IN ADDITION, IN CONNECTION WITH ANY ASSUMPTION OF THE LOAN AS SET FORTH IN THIS SECTION, THIS SECTION OF THE SECURITY INSTRUMENT WILL BE MODIFIED TO THE SATISFACTION OF LENDER IN ORDER TO REFLECT THE OWNERSHIP AND STRUCTURE OF THE ASSUMING PARTY AND ASSUMING GUARANTORS IN CONNECTION THEREWITH.**

**18. Notification to Lender and Consent of New Significant Owners of Borrower or Owner or Entity Guarantor.** Notwithstanding anything to the contrary in this section 17, at any time during the term of the Loan that Borrower contemplates a transfer of interest that will result in an individual or entity obtaining, following such transfer, 25% or more of the aggregated equity interests, directly or indirectly, in Borrower or Owner or any Entity Guarantor (either through increasing ownership interest of an existing party with equity interest in Borrower or a new party) (such interest holder being hereafter referred to as a "**New 25% Owner**") then Borrower will provide prior written notice to Lender of such intent, and such notice to Lender shall include the results of Borrower's standard check of the name of the individual or entity against the United States Treasury Office of Foreign Asset Control (OFAC) list ("**OFAC List**") to ensure the individual or entity does not appear on any such list ("**Borrower's OFAC Check**"). Lender shall inform Borrower if Borrower's OFAC Check has been cleared prior to allowing said transfer, provided that Lender shall be deemed to have approved and cleared Borrower's OFAC Check if Lender does not provide Borrower with written notice of Lender's disapproval of Borrower's OFAC Check within five (5) business days following receipt of the same. If Borrower's prior written notice of a transfer contemplated by this Section is not accompanied by Borrower's OFAC Check, or if Lender has reasonable grounds to believe that Borrower's OFAC Check does not include all New 25% Owners, then Lender shall notify Borrower in writing within five (5) business days following receipt of Borrower's notice of its intent to make such transfer of Lender's intent to perform its standard check of the name of the individual or entity against the OFAC List to ensure the individual or entity does not appear on any such list ("**Lender's OFAC Check**"), which notice to Borrower shall include the identifying information (if any) that Lender requires in order to perform Lender's OFAC Check; and if Lender does not so notify Borrower of its intent to perform Lender's OFAC Check within such time period then the requirements of this Section shall be deemed to be satisfied in full. If Lender does so notify Borrower of its intent to perform Lender's OFAC Check then Lender shall inform Borrower if Lender's OFAC Check has been cleared prior to allowing said transfer, provided that Lender's OFAC Check shall be deemed to be cleared if Lender does not provide Borrower with written notice of Lender's disapproval of Lender's OFAC Check within five (5) business days following the date on which Lender notified Borrower of its intent to perform Lender's OFAC Check. Lender shall not have the right to disapprove Borrower's OFAC Check or withhold its consent to such transfer on the grounds of such disapproval (or solely based on the results of Lender's OFAC Check) if the party on which such disapproval is based does not actually appear on the OFAC List. Upon Borrower's receipt of Lender's approval of Borrower's OFAC Check or Lender's OFAC Check, as applicable (or upon Lender's deemed approval in accordance with this Section), the requirements of this Section shall be deemed to be satisfied in full.

**19. No Other Encumbrances; Due on Encumbrance.** At no time while the Loan remains unpaid shall Owner create, assume, or suffer to exist on the Property, or any part thereof, any mortgage, trust deed or other security instrument in favor of any person other than Lender (an "**Encumbrance**") without first obtaining the prior written consent of Lender provided, however, that nothing herein shall limit Borrower's or Owner's rights with respect to trade payables or equipment leases, except as limited by any applicable special purpose entity requirements, Owner agrees that should the Property or any part thereof at any time be or become subject to the lien of any other mortgage or security instrument or subject to any other voluntary encumbrance, pledge, or security interest (except with the prior written consent of Lender or where such consent is not required), the whole of the principal and interest secured hereby and any applicable delinquency charge or prepayment fee shall, at the option of Lender, become immediately due

and payable. Whether or not the consent of Lender has been obtained, Owner, for itself and for all future owners of the Property, agrees that this Security Instrument and the other Loan Documents may be modified, varied, extended, renewed, or reinstated at any time by agreement between the holder of this Security Instrument and Owner, or the then owner of the Property, without notice to, or the consent of, any subordinate mortgagee or lienor, and any such modification, variance, extension, renewal, or reinstatement shall be binding upon such subordinate mortgagee, Lender or lienor with the same force and effect as if such subordinate mortgagee, Lender or lienor had consented thereto.

**20. Insurance.** Without limiting the generality of any other provision contained in this Security Instrument, Owner shall procure and continuously maintain (or cause its tenants to maintain) while the Loan remains unpaid and this Security Instrument remains in effect "all risk" property insurance covering all improvements on the Property providing 100% replacement cost coverage on an agreed amount basis to remove any co-insurance provision, insuring against loss by fire, smoke, explosion, riot, lightning, hail, wind, windstorm, vandalism and other risks covered by the broadest form of extended coverage available from time to time, loss of rents (or business income, if owner occupied) coverage in amounts sufficient to compensate Owner for all rents or income from the Property during a period of not less than one year, and earthquake coverage to the extent required by Lender in the exercise of its business judgment in light of commercial real estate practices by institutional lenders lending against real property in the general vicinity where the Property is located at the time the insurance is issued, and coverage for such other perils and risks as may be reasonably required by Lender from time to time. If the Property is ever designated as having special flood hazards or any other designation which would make the Property subject to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, modified, supplemented, or replaced from time to time, or any similar law, Owner agrees to do everything reasonably necessary to comply with the requirements of said law and related regulations in order that flood insurance will be available to Owner, and to obtain and maintain for the benefit of Lender such an insurance policy with limits and deductibles satisfactory to Lender. Owner shall also procure and maintain Occurrence Form commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about, or resulting from, the Property or Owner's use and occupancy of the Property with limits in such amounts as are acceptable to Lender, but in no event less than \$1,000,000 combined single limit per occurrence for loans up to \$5,000,000, or \$2,000,000 for loans of \$5,000,000 or more, provided that for hotels and senior living facilities, the combined single limit per occurrence shall be not less than \$5,000,000 regardless of loan size; and \$2,000,000 general aggregate (or \$5,000,000 general aggregate for hotels or senior living facilities), naming Lender as an additional insured on a primary/non-contributory basis (with endorsement CG2018 or equivalent). All insurance shall be with companies licensed to do business and admitted in Alabama satisfactory to Lender having an A.M. Best rating of A- or better with limits acceptable to Lender, in form satisfactory to Lender and with deductibles not to exceed \$25,000 for loans up to \$5,000,000 or \$100,000 for loans in excess of \$5,000,000. Each policy must provide no less than fifteen (15) days prior written notice to Lender of any cancellation, non-renewal or material change (or ten (10) days in the case of a cancellation for nonpayment of premiums). No approval by Lender of the amount, type or form of any insurance shall be construed as a representation or warranty by Lender of its sufficiency for Owner's purposes. Owner shall pay all premiums for the insurance coverage required hereunder in a timely manner. At least ten (10) days prior to the expiration of the term of any insurance policy, Owner shall furnish Lender with written evidence of renewal or issuance of a satisfactory replacement policy. If requested, Owner shall deliver copies of all policies to Lender. In the event of foreclosure of this Security Instrument all interest of Owner in any insurance policies pertaining to the Property and in any claims against the policies and in any proceeds due under the policies shall pass to Lender. No approval by Lender of the amount, type or form of any insurance shall be construed to be a representation by Lender of its sufficiency for Owner's purposes. If Owner fails to maintain insurance in accordance with this Security Instrument, Lender may, but need not, obtain insurance to protect Lender's interest in the Property ("**Force Placed Insurance**", provided Lender promptly notifies Borrower and Owner in writing of the placement of the Forced Placed Insurance. For instance, and without limiting Lender's rights hereunder and under the other Loan Documents, Lender may obtain Force Placed Insurance if: (a) Owner fails to deliver to Lender, prior to the expiration of any such required insurance coverage, evidence satisfactory to Lender that Owner has renewed or replaced such coverage; (b) the amount of insurance is reduced below Lender's requirements; (c) the deductible is increased above Lender's requirements; or (d) the insurer providing the insurance does not meet Lender's insurance company rating requirements.

**21. Insurance Proceeds.** All insurance proceeds (including but not limited to proceeds of policies of insurance that Lender does not require Owner to carry) with respect to the Property are hereby assigned to Lender (all such assigned items shall constitute part of the "Property" for purposes hereof) as additional security for the Loan. Owner shall give immediate notice to Lender of any loss or damage to the Property due to casualty in excess of \$250,000 (a "**Material Loss**"). Provided no Event of Default has occurred and is continuing, Owner shall have the right to settle and receive the proceeds payable with respect to a loss or damage except for a Material Loss, and shall with reasonable promptness apply any funds so received to the repair and reconstruction of the damage. All proceeds payable with respect to a Material Loss shall be paid to Lender and applied to repair or restore the Property, provided no Event of Default has occurred and is continuing other than an Event of Default arising solely due to the casualty event that gave rise

to such Material Loss); such repair or restoration is economically feasible; the security of this Security Instrument is not impaired; and at least one year remains on the unexpired term of the Note. If the foregoing conditions are not satisfied, Lender shall, at its option, after deducting its expenses including reasonable out-of-pocket attorneys' fees, (a) apply all or part of the proceeds against the sums owed under the Loan Documents including the Note whether or not (i) the sums are actually then due or (ii) Lender's security is impaired, and without affecting the due dates or amount of payments thereafter due under the Note, or (b) release all or any part of the proceeds to Owner, or (c) permit all or any part of the proceeds to be used for repair and restoration of the Property on such conditions as Lender may reasonably impose including evidence of sufficient funds to complete the work, approval of the plans and specifications and periodic disbursement of the proceeds (and of any additional funds Lender requires Owner to deposit with Lender for disbursement to pay the costs of the repair and restoration) during the course of repair and restoration. Lender's security will be deemed to be impaired if Owner fails to comply with such conditions in any material respect. Owner agrees to pay Lender's reasonable out-of-pocket costs and reasonable out-of-pocket attorneys' fees incurred in connection with the collection and administration of any insurance proceeds as provided herein. Except when an Event of Default caused by the gross negligence or willful misconduct of Borrower or Owner is then pending, any application of the insurance proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of insurance proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of installments due under the Note, absent express agreement of Lender to the contrary. No application of insurance proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

**22. Condemnation Proceeds.** All awards, payments, damages (whether direct, consequential or otherwise), claims and proceeds thereof in connection with any condemnation or eminent domain proceeding affecting the Property, or for conveyance in lieu of condemnation (collectively, a "**Condemnation Proceeding**"), are hereby assigned to Lender (all such assigned items shall constitute part of the "Property" for purposes hereof) as additional security for the Loan. Owner shall give immediate notice to Lender of any Condemnation Proceeding, and Owner will appear in and prosecute any such proceeding unless otherwise directed by Lender in writing. If an Event of Default has occurred and is continuing at the time of commencement of the Condemnation Proceeding, (other than an Event of Default arising solely due to such Condemnation Proceeding), then Owner hereby irrevocably empowers Lender, in the name of Owner, as Owner's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all claims with respect to such Proceeding; provided, however, Lender shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. In addition, whether or not an Event of Default has occurred and is continuing, Lender may, at its option, appear in and participate in any Condemnation Proceeding in Lender's own name, through counsel of its choice. Owner shall deliver to Lender at Owner's expense such documentation and information regarding the Condemnation Proceeding, its impact on the Property and Owner's position with respect thereto as Lender may reasonably request from time to time, including without limitation survey maps showing the portions of the Property affected by the Condemnation Proceeding, in order to enable Lender to exercise its rights hereunder in connection with such Condemnation Proceeding.

All awards payable pursuant to the Condemnation Proceeding shall be paid to Lender for application as provided herein. If Owner receives any such awards directly from a condemning authority, Owner shall deliver the same to Lender forthwith and, until such delivery, shall hold the same in trust for Lender pending disposition as provided herein. Lender shall, after deducting its expenses including reasonable out-of-pocket attorneys' fees incurred in such proceedings and otherwise in the collection of the proceeds, make such net proceeds (the "**Net Claims Proceeds**") available to Owner (subject to the terms of the following paragraph) to repair and reconstruct the Property, provided all of the following conditions (the "**Proceeds Release Conditions**") are satisfied: (i) no Event of Default has occurred and is continuing (other than an Event of Default arising solely due to such condemnation); (ii) Owner establishes to Lender's satisfaction that the Property can be restored to a value, usefulness and physical condition in all material respects comparable to its condition immediately prior to the taking; (iii) Lender shall have determined that the Net Claims Proceeds are sufficient to pay the total cost of repair or reconstruction (the "**Repair Costs**"), or Owner shall have deposited with Lender sufficient additional funds from separate resources to meet any shortfall between the Net Claims Proceeds and the reasonably estimated Repair Costs (the "**Owner Deposit**"); (iv) Lender shall have approved the plans and specifications, permits, construction contract, construction budget and schedule, and the selection of the architect, engineer and contractor for the repair and reconstruction work, with such approval not to be unreasonably withheld; and (v) Lender shall otherwise be fully satisfied that the security of this Security Instrument and Owner's ability to perform its obligations hereunder and under the other Loan Documents is not impaired by reason of the taking. Owner shall perform any required repairs in compliance with Section 10 of this Security Instrument. If any of the Proceeds Release Conditions are not satisfied within a reasonable time (as reasonably determined by Lender), then Lender may apply the Net Claims Proceeds to the Secured Obligations in such order as Lender may determine, whether then due and payable or not. Except when an Event of Default caused by the gross negligence or willful misconduct of Borrower or Owner is then pending, any such application of the Net Claims Proceeds against the Secured Obligations shall be without imposition of any prepayment fee. No application of Net Claims Proceeds against the Secured Obligations will result in any adjustment in the amount or due dates of

installments due under the Note, absent express agreement of Lender to the contrary. No application of Net Claims Proceeds shall be deemed to cure or waive any Event of Default or notice of default hereunder or invalidate any action taken pursuant to any such notice.

If the Proceeds Release Conditions are satisfied but the total amount of the Net Claims Proceeds exceeds \$250,000, then Lender may, at its option, hold or cause an independent third party escrow holder to hold such proceeds (together with any required Owner Deposit) in an account for disbursement to Owner to pay the Repair Costs (with any third party escrow fees being borne by Owner) according to such reasonable disbursement procedures as Lender may impose to assure that all repair and reconstruction work will be completed lien free, with reasonable diligence, in accordance with all applicable laws and permits and in conformity with any plans, specifications and contracts approved by Lender. If the actual Repair Costs are less than the Net Claims Proceeds, then upon completion of all required repair and reconstruction of the Property, and provided that no Event of Default has occurred and is continuing and that the value of the Property has not been materially impaired by reason of the taking, then any such surplus proceeds shall be released to Owner. Otherwise, such surplus proceeds may be applied by Lender for application against the outstanding balance of the Secured Obligations.

In addition, if the Proceeds Release conditions are satisfied but Lender reasonably determines that work to be carried on in rights of way or other properties adjacent to the Property as part of the public project that is the basis of the Condemnation Proceeding may reasonably be expected to temporarily disrupt the business operations on the Property and accordingly impair in any material manner the ability of the Property to generate the income necessary to pay the interest and principal as it comes due under the Note, and to pay all required expenses of operating and maintaining the Property as required hereunder and under the other Loan Documents, Lender may hold or cause an independent third party escrow holder to hold the Net Claims Proceeds or such portion thereof as Lender reasonably determines to be necessary as additional security for the Secured Obligations, and/or as a fund for the payment of debt service on the Loan, with provisions for the release of such funds at a reasonable time when the Property's ability to generate the income is no longer impaired.

Owner agrees to pay all Lender's reasonable out-of-pocket costs and reasonable out-of-pocket attorneys' fees incurred in connection with any actions taken by Lender pursuant to this Section.

### **23. Leases.**

**23.1 Performance, Preservation and Enforcement of Leases.** Owner shall comply in all material respects with all of the terms, conditions and provisions of the Leases so that no breach shall occur on the part of Owner, and shall do all that is reasonably necessary to preserve all the Leases in force. Owner shall give prompt written notice to Lender of the receipt by Owner of any written notice from any tenant or subtenant under a Lease claiming any default by Owner under a Lease. Owner shall enforce in a commercially reasonable manner the performance in all material respects of each and every obligation to be performed by any tenant under its Lease, and shall notify Lender of the occurrence of any default under a Lease which, if not cured, could permit the tenant to terminate the Lease or abate the payment of Rent. Owner shall neither create nor permit any lien, charge or encumbrance upon the Rents, the proceeds thereof or its interest as lessor of the Leases except the lien of this Security Instrument. Owner shall notify Lender in writing prior to becoming the beneficiary under any letter of credit supporting any of the Leases, and shall take all actions, and execute all documents, necessary or appropriate to give Lender control (as defined in the UCC) of such letter of credit and all letter of credit rights thereunder and, if required by Lender, to make Lender the transferee beneficiary of such letter of credit. Owner shall maintain all security deposits collected from tenants with respect to their Leases in accordance with all applicable legal requirements. Except for the lien of real property taxes and assessments and except for the deeds of trust, mortgages and other security instruments contemplated by the Loan Documents, Owner shall not permit any lien to be created against the Property which may be or may become prior to any Lease.

**23.2 Proceeds of Lease Default.** To the maximum extent permitted by law, if an Event of Default has occurred and is continuing, then any proceeds or damages resulting from a tenant's default under any Lease, and any lease termination fees payable by a tenant to Owner under any Lease (collectively, "**Lease Proceeds**") shall be payable to Lender for application against the principal balance of the Secured Obligations but without imposition of a prepayment fee, notwithstanding that such sums may not then be due and payable. In the absence of an Event of Default, and to the maximum extent permitted by law, any Lease Proceeds shall be held by Lender as a reserve to be released to pay Owner's expenses in repairing any damage to the subject leased premises, and re-tenanting the premises, including without limitation leasing commissions and tenant improvement expenses. The specific terms of such reserve will be as provided in a detailed reserve agreement to be executed by Owner and Lender.

**23.3 Prior Approval for Owner Actions under Leases.** Without the prior written consent of the Lender, Owner will not:

- (a) receive or collect any Rents from any present or future tenant of the Property for a period of more than one (1) month in advance of the date on which such payment is due, (unless Borrower or Owner keeps such excess sums in accounts of

Owner until the applicable month for which such rent applies commences (and in no event may Owner collect more than three (3) months in advance without Lender's consent)), or pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents to anyone other than Lender;

(b) enter into a new lease for a lease term of shorter than 2 years (other than with respect to an extension of an existing tenant), and at a lease rate that is less than the lesser of 90% of the lease rate in place at the time the Loan funded or 90% of the fair market rent at such time;

(c) with respect to any Lease, amend the Lease in a manner that reduces the amount of the rents, in an amount in excess of 10% of the lease rate in place at the time the Loan funded, or other sums due thereunder, changes the frequency of the payment of rents, shortens the term of the Lease by more than 1 year or shortens or eliminates any renewal option, materially increases the landlord's obligations of with respect to any Lease, or releases any tenant from any material obligation to insure, maintain or repair the Property or from any other material financial obligation of the tenant under such Lease;

(d) subject to subsection (c) above, waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge other than as to non-material items, in the ordinary course of business acting in a commercially reasonable manner, any tenant under any Lease, or a guarantor under a lease guaranty, of and from any obligations, covenants, conditions and agreements by tenant to be kept, observed and performed, including the obligation to pay the Rents in the manner and at the place and time specified therein;

(e) consent to any surrender of any Lease or the exercise of any right of recapture provided in any Lease, or

(f) except in accordance with the terms of the Lease providing for termination or other remedies in the event of default by a tenant, cancel or terminate any Lease, or commence an action of ejectment or any summary proceedings for dispossession of the tenant under any Lease, or permit any of the aforementioned.

For purposes hereof, a "**Material Lease**" is a lease that covers twenty percent (20%) or more of the net rentable area of the Property.

**23.4 Copies of Leases.** Until all of the Secured Obligations shall have been paid in full, Owner shall deliver to Lender, upon request, executed copies of (i) any renewals or amendments of existing Leases and (ii) all future Leases upon all or any part of the Property, and (iii) any transfers and assignments of such Leases or subleases of space under any Lease.

**23.5 Indemnification.** Owner shall indemnify, defend and hold Lender harmless from any and all liability, loss, injury, damage or expense which Lender may incur under or by reason or in defense of any and all losses, damages, claims, expenses, causes of action and demands whatsoever which may be asserted against Lender arising out of the Leases (a "**Lease Claim**"), including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Owner, but not delivered to Lender and any Lease Claim arising from any other actions by Owner that require the consent of Lender under Section 22.3 hereof where such action was undertaken without such consent. Notwithstanding anything herein to the contrary, in no event shall Owner be required to indemnify Lender for Lender's (or its' affiliates', agents' employees' or representatives') gross negligence or willful misconduct or any Lease Claims arising as a result of commercially unreasonable decisions made by a receiver appointed by Lender.

**24. Assignment of Leases and Rents; Owner's Revocable License to Collect.** Owner hereby unconditionally, absolutely and irrevocably assigns to Lender all of Owner's interest in the Rents and Leases. So long as no Event of Default has occurred, and is continuing, Owner shall have a revocable license granted by Lender to collect (but not prior to accrual) the Rents as they become due. Owner shall use the Rents to pay normal operating expenses for the Property then due and payable and sums due and payments required and payable under the Loan Documents before using the Rents for any other purposes. Owner covenants that it will make no subsequent assignment of the Rents (or any portion thereof) without the prior written consent of Lender. Owner's license to collect the Rents shall not constitute Lender's consent to the use of cash collateral in any bankruptcy proceeding.

**25. Lender's Right to Collect Rents.** During the continuance of an Event of Default, Lender or its agents, or a court appointed receiver, may collect the Rents without further notice to Owner. In doing so, Lender may (a) evict tenants for nonpayment of rent (after expiration of applicable notice and cure periods), (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best and (d) institute proceedings against any tenant for past due rent. In addition, during the continuance of an Event of Default, Lender may require Owner to transfer all security deposits under the Leases with Lender. The Rents received shall be applied to payment of the reasonable out-of-pocket costs and expenses of collecting the Rents, including a reasonable fee to Lender, a receiver or an agent, operating expenses for the Property (including the funding of reasonable reserves for capital replacements) and any sums due or payments required under the Loan Documents, in such amounts as Lender may reasonably determine. Any excess Rents shall be paid to Owner, however, Lender may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Lender's failure

to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Lender of its rights to collect the Rents. The collection or application of the Rents shall not cure or waive any Event of Default. Lender or a receiver shall have no obligation to perform any of Owner's obligations under the Leases, nor to assume any responsibility for any security or other deposits delivered to Owner by any tenant and not delivered to Lender. In exercising its rights under this section Lender shall be liable only for the proper application of and accounting for the Rents actually collected by Lender or its agents. Any Rents paid to Lender or a receiver shall be credited against the amount due from the tenant under the Lease. In the event any tenant under the Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the leases assigned hereby, Owner covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Lender; any check in payment of damages for rejection or termination of any such Lease will be made payable to both the Owner and Lender; and Owner hereby assigns any such payment to Lender and further covenants and agrees that upon request of Lender, it will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the Loan in such manner as Lender may elect. The application of such proceeds against the balance owed under the Loan Documents shall be without imposition of any prepayment fee provided no Event of Default is pending at the time of such application. The collection of Rents by Lender as set forth above shall in no way waive the right of Lender to foreclose this Mortgage if an Event of Default occurs. Upon the curing of any Event of Default, Lender's rights under this Section 24 shall immediately cease and be returned to Owner (until and unless another Event of Default is continuing).

**26. Owner Existence.** If Owner is a trust, corporation, partnership, limited liability company, or other entity, Lender is making the Loan in reliance on Owner's continued existence, ownership and control in its present form. Owner will not alter its name, jurisdiction of organization, or type of legal entity without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, and will do all things reasonably necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. Owner shall do all things reasonably necessary to preserve its existence in force and to preserve all franchises, rights and privileges granted by the laws under which it is organized.

**27. Fixture Filing.** To the extent permitted by applicable law, this Security Instrument shall also serve as a financing statement filed for record in the real estate records as a fixture financing statement pursuant to the UCC covering any Property which is now or may hereafter become fixtures with respect to the Property. For the purpose of this fixture filing, Owner shall be the "Debtor" and Lender shall be the "Secured Party" and the addresses of Owner and Lender are as set forth in the preamble of this Security Instrument, and the collateral shall be any fixtures on the Property. Owner is the record owner of the Land.

**28. Default.** TIME IS OF THE ESSENCE HEREOF. Any of the following events shall constitute an "Event of Default:"

(a) Borrower fails to pay all of the indebtedness evidenced by the Note on the maturity date thereof as specified in the Note, or fails to pay any monthly installment of principal or interest on the Note within ten (10) days after the date the same is due and payable, or

(b) Borrower fails to pay prior to delinquency any taxes or assessments on the Property, or

(c) any representation or warranty made by Obligors either of them was materially false or misleading at the time it was made, or Obligors or either of them, fail to disclose any material fact known to Obligors, or either of them (provided that if the same was inadvertent and is subject to cure, Owner shall have a period of fifteen (15) days to cure the same after receipt of written notice from Lender prior to constituting an Event of Default, or

(d) a default occurs under the Environmental Agreement and is not cured within any applicable cure period provided therein, or

(e) Owner fails to provide or continuously maintain the insurance required by this Security Instrument, or

(f) Obligors, or either of them, fail to perform or observe any other obligation of Obligor, or any of them, to Lender within the applicable notice and cure period set forth herein or in another Loan Document, or

(g) (i) Obligors, or either of them, file or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (ii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against Obligors, or either of them, and any of the above described in this clause (g)(ii) is not dismissed within ninety (90) days, or

(h) (i) any guarantor of the Loan revokes, or attempts to revoke, its guaranty, or (ii) such a guarantor files or acquiesces to the filing of an assignment for the benefit of creditors, a receivership, a petition in bankruptcy or any similar proceeding, or (iii) any assignment for the benefit of creditors, receivership, a petition in bankruptcy or similar proceeding is filed against such Guarantor and any of the above described in this clause (h)(iii) is not dismissed within ninety (90) days, or

(i) a Conveyance or Encumbrance has occurred without the prior written consent of Lender (where such consent is required), except as otherwise provided in Section 17 hereof, or

(j) a Change of Control has occurred with respect to Obligors, or either of them, or any guarantor without the prior written consent of Lender (when such consent is required) except as otherwise provided in Section 17 hereof, or

(k) the death of a natural person who is a guarantor of the Loan, except as otherwise provided in Section 17 hereof; or

(l) Obligors fail to provide Lender with unaudited financial statements, in form and content acceptable to Lender, on or before April 30 of each calendar year, and failure continues for fifteen (15) days after receipt of written notice from Lender; or Borrower violates any negative covenant set forth in the Loan and Security Agreement; or

(m) Obligors, or either of them, fail to perform or observe any other covenant or agreement of Obligors, or either of them, contained in this Security Instrument or in the other Loan Documents and not specifically described in this section or given a specific time frame for performance, (i.e. financials on or before April 30 of each calendar year), and such failure continues for more than thirty (30) days after receipt of written notice from Lender specifying such default; provided, if such default is curable but not reasonably curable within thirty days, then Obligors shall have such additional time, not to exceed ninety (90) days in the aggregate from the date of Lender's notice, in which to effect such cure, provided Obligors commences the cure within the initial thirty-day period and diligently prosecutes such cure to completion.

**29. Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender by written notice to Borrower may declare the whole sum of the unpaid principal together with interest accrued thereon and any applicable prepayment premium, immediately due and payable, and upon such declaration, the unpaid principal of the Note and all accrued and unpaid interest thereon and any applicable prepayment premium shall at once become immediately due and payable, provided Lender notifies Borrower in writing of such acceleration, and Lender may exercise its rights and remedies under the Loan Documents and applicable law, including without limitation, (a) bring a court action at law or in equity to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the indebtedness secured hereby or by any of the other Loan Documents; (b) cause any or all of the Property to be sold under the power of sale granted hereby in any manner permitted by applicable law; (c) exercise any other right or remedy available under law or in equity or under the Loan Documents; (d) sell the Property at public auction to the highest bidder in front of the front or main door of the court house of the county or counties as may be required where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the Property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county (or all counties, if more than one) in which the Property is located (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks), and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Any such sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at said sale and purchase said Property, or any part thereof, if Lender is the highest bidder, and in lieu of paying cash may make settlement for the purchase price by crediting upon the indebtedness of Borrower secured by this Mortgage the net sales price after deducting the expenses of the sale and the cost of the action and any other reasonable sums which Lender is authorized to deduct under this Mortgage. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion. Lender's failure to enforce any default shall not constitute a waiver of the default or any subsequent default. Any such sale shall operate as a foreclosure of this Mortgage only as to the Property sold, and if the sums secured hereby are not thereby satisfied in full, the other Property shall continue as security and there may be a further foreclosure of this Mortgage, either by sale under power of sale or by judicial foreclosure. The proceeds of any sale under this Mortgage will be applied in the following manner: FIRST: payment of the reasonable costs and expenses of the sale, including but not limited to, Lender's fees, reasonable out-of-pocket legal fees and disbursements, title charges and transfer taxes, and payment of all reasonable out-of-pocket expenses, liabilities and advances of Lender, together with interest at the default rate of interest provided under the Note on all advances made by Lender; SECOND: payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the default rate of interest rate provided under the Note; THIRD: payment of the indebtedness and obligations of Borrower secured by this Mortgage in any order that Lender chooses; FOURTH: the remainder, if any, to the person or persons appearing of record to be the owner of the Property at the time of such sale. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event Lender's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted by Borrower to be a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property. Borrower waives all rights to direct the order or manner in which any of the Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

**30. Piecemeal Foreclosure.** Borrower acknowledges that a primary inducement to Lender in making the Loan secured hereby is the ability, in event of foreclosure, and, at Lender's option, to offer for sale at foreclosure and to sell and foreclose on all

parcels secured by this Mortgage, *en masse* rather than parcel-by-parcel. To induce Lender to make the Loan, Borrower specifically waives any right to compel Lender to offer the Property first by parcel rather than *en masse*, in the event of foreclosure, and consents to the offering by Lender of the Property *en masse* at the option of Lender, rather than by parcel. Borrower further forever releases, quitclaims, acquits, and discharges Lender from any liability or claims of any nature resulting from the offering by Lender of the Property *en masse* at any foreclosure sale, and the purchase at any such foreclosure sale by any party of the Property *en masse* rather than by separate parcel(s); and if the Property is purchased at any foreclosure sale *en masse*, Borrower further waives any right to redeem the Property or any part thereof on a parcel by parcel basis rather than *en masse*. The foregoing waivers and releases shall be binding on Borrower and the successors, representatives, lienors, creditors, and assigns of Borrower.

**31. Cumulative Remedies.** All of Lender's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law, in equity or provided by statute. In order to obtain performance of Obligors' obligations under the Loan Documents, without waiving its rights in the Property, Lender may proceed against Owner or may proceed against any other security for or guaranty of the Note, in such order and manner as Lender may elect. The commencement of proceedings to enforce a particular remedy shall not preclude the discontinuance of the proceedings and/or the commencement of proceedings to enforce a different remedy.

**32. Sale of Property after Default.** During the continuance of an Event of Default, the Property may be sold separately or as a whole, at the option of Lender. In the event of a foreclosure sale of all the Property, Lender may also realize on the personal property security in accordance with the remedies available under the UCC or at law. In the event of a foreclosure sale or the enforcement by Lender of any other rights and remedies hereunder, Owner and the holders of any subordinate liens or security interest waive any equitable, statutory or other right they may have to require marshaling of assets or foreclosure in the inverse order of alienation, or to require Lender to pursue its remedies against any other assets.

**33. Appointment of Receiver.** During the continuance of an Event of Default, Lender shall be entitled, without notice, without bond, and without regard to the adequacy of the security, to the appointment of a receiver for the Property to take possession of and operate the Property and collect the rents, profits, issues and revenues thereof, provided Lender promptly notifies Owner in writing of the appointment. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Lender by the Loan Documents.

**34. Foreclosure of Tenant's Rights; Subordination.** During the continuance of an Event of Default, Lender shall have the right, at its option, to foreclose this Security Instrument, subject to the rights of any tenants on the Property. Lender's failure to foreclose against any tenant shall not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender at any time may subordinate this Security Instrument to any or all of the Leases except that Lender may retain its priority claim to any condemnation or insurance proceeds.

**35. Release After Payment.** Upon payment in full of the Secured Obligations, Lender shall release the lien of this Mortgage and the Loan Documents. The recitals in any release of any matters of fact shall be conclusive proof of the truthfulness thereof. Owner shall pay any reasonable fees or recording charges incurred by Lender in connection with the release.

**36. Release of Parties or Property.** Without affecting the obligations of any party under the Loan Documents (including any guarantor, surety or endorser of Owner's obligations) or any subsequent purchaser of the Property, and without affecting the lien of this Security Instrument and Lender's security interest in the Property, Lender may, without notice (a) release Owner and any other party now or hereafter liable for the payment or performance of any obligations under the Loan Documents, including guarantors of the Loan, (b) release all or any part of the Property, (c) subordinate the lien of this Security Instrument or Lender's security interest in the Property, (d) take or release any other security or guaranty, (e) grant an extension of time or accelerate the time for performance of the obligations owed under the Loan Documents, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) join in the grant of any easement on the Property. Any subordinate lienholder shall be subject to all such releases, extensions, advances or modifications without notice to or consent from the subordinate lienholder. Owner shall pay any reasonable attorneys' fees, title insurance premiums or recording fees in connection with any of the foregoing.

**37. Nonwaiver of Terms and Conditions.** TIME IS OF THE ESSENCE with respect to Owner's performance of its obligations due under the Loan Documents. Lender's failure to require prompt enforcement of any required obligations shall not constitute a waiver of the obligations due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Owner and Lender. Oral amendments,

oral waivers and purported oral terminations are void. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

**38. Use of Property.** Owner represents and warrants to Lender that the Property is not used principally, or at all, for agricultural or farming purposes.

**39. Joint and Several Liability.** If there is more than one Owner of this Security Instrument, their obligations shall be joint and several.

**40. Operating and Financial Statements and Owner Certification.** Owner will deliver to Lender no later than April 30 of each calendar year, operating statements and occupancy reports (including a rent roll) for the Property in a form and for periods reasonably satisfactory to Lender certified as correct by Owner. Owner shall permit Lender to examine all books and records in the possession, custody or control of Owner pertaining to the Property and deliver to Lender upon reasonable request all financial statements, credit reports and other documents in the possession, custody or control of Owner relating to the financial condition of any tenant of the Property, Owner, any general partner of Owner, and any guarantor of the Loan, including rental, income and expense statements pertaining to the Property and tax returns. Notwithstanding the foregoing, as long as no Event of Default has occurred, Lender shall not request copies of or access to such statements, books and records more often than once for each of Owner's fiscal years. Further, Owner will complete, execute and deliver to Lender upon Lender's request, and no later than April 30 of each calendar year but no more than once per calendar year, Lender's form of Borrower Certification, which shall be true, complete and accurate in all material respects.

**41. Maximum Interest Rate.** No person shall be obligated to pay the amount of any interest to the extent it is in excess of the maximum amount of interest permitted by applicable law. The Loan Documents are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance or detention of the money loaned under the Note or otherwise, or for the performance or payment of any of the Secured Obligations, exceed the maximum amount permitted under applicable law. Owner and Lender intend to comply strictly with the applicable usury laws of the State of Alabama. If Lender or any other holder of this Security Instrument shall ever receive as interest on the Loan an amount which exceeds the maximum amount of interest permitted by applicable law, such excess amount shall be applied to reduction of the principal amount owing on the Loan so as to fully and strictly comply with such law. Without limiting the foregoing, all calculations of interest shall be made, to the extent permitted by law, by amortizing, prorating, allocating and spreading all interest in equal parts over the full stated term of the Note.

**42. Evasion of the Prepayment Fee or Premium.** If an Event of Default continues beyond any applicable notice and cure period, any tender of payment sufficient to satisfy the Secured Obligations made at any time after acceleration of the indebtedness hereby secured and prior to foreclosure sale shall constitute an evasion of the prepayment terms contained in the Note, if any, and shall be deemed a voluntary prepayment and subject to payment of any applicable prepayment fee. Accordingly, to the extent permitted by law, such payment shall include any additional fee or premium required by the prepayment privilege in the Note.

**43. Payment of New Taxes.** If any federal, state or local law is passed subsequent to the date of this Security Instrument which requires Lender to pay any tax because of this Security Instrument or the sums due under the Loan Documents (other than income, withholding, profits, franchise and doing business taxes), then Owner shall pay to Lender on demand any such taxes if it is lawful for Owner to pay them. If it is not lawful for Owner to pay such taxes, then at its option Lender may, upon at least one hundred eighty (180) days written notice to Owner, declare the entire unpaid balance of the Secured Obligations with accrued interest thereon to be immediately due and payable, but without imposition of any prepayment fee, penalty or premium. In addition, if Lender requests payment of any taxes pursuant to this provision, Owner shall have the right to elect to repay the Loan without imposition of any prepayment fee, penalty or premium. In no event shall Lender have the right to request payment for any taxes pursuant to this provision more than one hundred eighty (180) days after the same are assessed against Lender.

**44. Environmental Compliance; Indemnity.** Owner represents and warrants to Lender that to the best of Owner's knowledge after due and diligent inquiry, and except as otherwise disclosed in the Pre-closing Environmental Audit (as defined in the Environmental Agreement) neither the Property nor any of the improvements thereon currently contain asbestos, or signs of material water damage or mold in any form, and no hazardous or toxic waste or substances are being stored, used, generated or released on (or located in the soil, groundwater, surface water or waterways) at or under the Property or any adjacent property, in each case in quantities or concentrations sufficient to require investigation, removal or remediation under the Environmental Laws (as hereinafter defined)(other than customary office, cleaning and other supplies), nor to Owner's knowledge have any such quantities or concentrations of such waste or substances been stored, generated, released or used on the Property or on any adjacent property

prior to Owner's ownership, possession or control of the Property, nor are any underground storage tanks (whether or not in use) located in, on or under any part of the Property. Owner shall provide written notice to Lender immediately upon Owner becoming aware of the presence of underground storage tanks or that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Owner will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances in violation of Environmental Laws. For purposes of this Security Instrument, the term "**hazardous or toxic waste or substances**" means asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, petroleum and its refined products, hazardous materials, and any other substance or material defined, regulated, controlled, limited, prohibited, or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic, or other similar term in Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 USC 9601, et seq.), the Hazardous Materials Transportation Act, as amended, (49 USC 1801, et seq.), the Resource Conservation and Recovery Act, as amended, (42 USC 6901, et seq.) the Clean Water Act, as amended, (33 USC 1251, et seq.), the Clean Air Act, as amended, (42 USC 7401, et seq.), the Toxic Substances Control Act, as amended, (15 USC 2601, et seq.) the Emergency Planning and Community Right to Know Act of 1986, as amended (42 USC 11001, et seq.), the Federal Water Pollution Control Act, as amended (33 USC 251, et seq.), any corresponding state laws or ordinances, or in any other applicable federal, state or local environmental and health statute, regulation or ordinance now or hereafter in effect governing the Property, its business, products or assets, with respect to discharges into the ground and surface water, emissions into ambient air and generation, control, accumulation, storage, treatment, transportation, removal, labeling, or disposal of waste materials or process by-products, the existence, cleanup, and/or remedy of contamination on property, the protection of the environment from soil, air or water pollution, or from spilled, deposited or otherwise emplaced contamination (the "**Environmental Laws**"). Owner shall promptly comply at Owner's expense with all statutes, regulations and ordinances which apply to Owner or the Property and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction by which Owner is bound, relating to the use, collection, storage, treatment, control, removal or cleanup of hazardous or toxic substances in, on or under the Property or in, on or under any adjacent property that becomes contaminated with hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Property. Lender may, but is not obligated to, following expiration of applicable notice and cure periods, upon reasonable notice and subject to the rights of tenants, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Lender; and Owner shall reimburse Lender on demand for the full amount of all costs and expenses incurred by Lender in connection with such compliance activities, including cleanup and removal. Owner shall indemnify, defend and hold harmless Lender, its officers, directors, agents, insurers, representatives and employees from and against any and all reasonable out-of-pocket loss, damage, injury, expense (including without limitation reasonable attorneys' fees and the cost of environmental consultants), liability, claims, suits, judgments, fines and penalties or liability (including claims, fines or penalties of any governmental entity) associated with or related to the use, manufacture, storage, dumping, disposal, discharge, release, cleanup or removal of hazardous materials or toxic waste affecting the Property. **THIS INDEMNITY WILL APPLY EVEN IF AND WHEN THE SUBJECT MATTER OF THE INDEMNITY ARISES OUT OF OR RESULTS FROM THE NEGLIGENCE OR STRICT LIABILITY OF LENDER**, but shall not apply if and when the subject matter of the indemnity arises out of or results from the willful misconduct or gross negligence of Lender or its affiliates, employees, agents and representatives. These covenants and agreements shall survive any foreclosure, release, discharge, payment or satisfaction of this Security Instrument or the Secured Obligations; provided, however, that to the extent Owner proves by a preponderance of evidence that any amounts that Lender seeks to recover from Owner are the result of a release or discharge of hazardous or toxic waste or substances onto the Property after title to the Property is transferred pursuant to a foreclosure or deed in lieu thereof, then Owner shall have no liability therefor. The provisions of the Environmental Agreement (i) shall be secured by this Security Instrument, and (ii) are separate and distinct from and in addition to, any and all rights of Lender against Owner, any guarantor or any other person under the Loan Documents, or applicable law, but may be read together to maximize the coverage with respect to the subject matter thereof, as determined by Lender.

**45. Reserves.** Upon the occurrence and during the continuance of an Event of Default, and following written notice to Owner from Lender, Owner shall thereafter pay to Lender, together with and in addition to the monthly payments of principal and interest payable on the Note, on the date set forth in the Note for the making of monthly payments, until the Note is fully paid, a sum, as reasonably estimated by Lender, equal to the taxes and special assessments next due on the Property, plus the premiums that will next become due and payable on insurance policies required by this Security Instrument, divided by the number of months to elapse before the premiums, taxes and special assessments are due, such sums to be held by Lender to pay said premiums, taxes and special assessments. Such payments ("**Reserves**") are to be held without allowance of interest to Owner (except as required by applicable law) and need not be kept separate and apart from other funds of Lender. Such Reserves shall be applied by Lender to real estate taxes, special assessments and insurance premiums on the Property as the same become due and payable. Collection of the reserves are solely for the added protection of Lender and entails no responsibility on the part of Lender beyond allowance of due credit for sums actually received by Lender and the payment by Lender of such taxes, special assessments and insurance premiums to the extent of the Reserves when statements therefor are actually presented to Lender by Owner. If the total of the

Reserves shall exceed the amount of payments actually applied by Lender, such excess may be credited by Lender on subsequent payments to be made by Owner, or at the option of Lender, refunded to Owner.

**46. Property Management.** Owner agrees that Lender shall have, and reserves the right to install, professional management of the Property at any time following the occurrence and during the continuance of an Event of Default. Such professional management shall be at the sole discretion of Lender and nothing herein shall obligate Lender to exercise its right to install professional management. The reasonable cost of such management shall be borne by Owner, shall be secured by this Security Instrument and shall be treated as an additional advance under the Loan Documents.

**47. USA Patriot Act Notification and Covenant:** Lender hereby notifies Owner that, pursuant to the requirements of Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 (the "**Act**"), Lender is required to obtain, verify and record information that identifies Owner, which information includes the name and address of Owner and other information that will allow Lender to identify Owner in accordance with the Act. Neither Owner nor any other party liable for the obligations under the Loan as a guarantor or general partner will, directly or indirectly, use the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to fund any activities or business of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), or in any other manner that would result in a violation of OFAC sanctions by any person or entity, including any person or entity participating in any capacity in the Loan. Borrower represents, warrants and covenants that neither Borrower, any Guarantor, nor any person or entity who directly or indirectly controls or is controlled by Borrower or any Guarantor, is or will become a sanctioned person or sanctioned entity according to any Specially Designated Nationals ("**SDN**") list or any sanctions list administered by OFAC or any other office or unit of government of the United States.

**48. Owner Not a Foreign Person.** Owner is not a "foreign person" as that term is defined by Section 1445(f) (3) of the U.S. Internal Revenue Code of 1986, as amended.

**49. Representations of Owner.** Owner represents and warrants to Lender that Owner (a) is (1) an individual of legal age and capacity, or (2) a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, duly organized, validly existing and in good standing under the laws of its creation, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Security Instrument and the other Loan Documents.

**50. Waiver of Right of Offset.** No portion of the Secured Obligations shall be offset or compensated by any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Owner may have against Lender.

**51. Notices.** Except for any notice required by law to be given in another manner, any notice to Owner or Lender hereunder shall be in writing and shall be given in accordance with the terms of the Loan and Security Agreement.

**52. Reasonableness of Fees and Costs.** Wherever reference is made in this Security Instrument to the payment or reimbursement by Owner of any fees or costs incurred by Lender in the administration of the Loan or the enforcement of the obligations of Owner hereunder or under the other Loan Documents, such reference shall be deemed to refer to actual and reasonable out of pocket fees or costs.

**53. Successors and Assigns.** This Security Instrument applies to, inures to the benefit of, and binds the parties and their respective heirs, representatives, successors and assigns.

**54. Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Security Instrument and the terms and conditions of any other of the Loan Documents, the terms and conditions of this Security Instrument shall prevail.

**55. Invalidity of Terms and Conditions.** If any term or condition of this Security Instrument is found to be invalid, the invalidity shall not affect any other term or condition of this Security Instrument and this Security Instrument shall be construed as if not containing the invalid term or condition.

**56. Rules of Construction.** This Security Instrument shall be construed so that whenever applicable, the use of the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited liability companies, trusts, limited partnerships and other entities.

**57. Section Headings.** The heading to the various sections have been inserted for convenience of reference only and shall not be used to construe this Security Instrument.

**58. Applicable Law.** This Security Instrument shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Alabama (without giving effect to the conflict of laws principles thereof), including the laws governing the creation, perfection, enforceability and priority of the liens and security interests created by this Security Instrument and the procedures for foreclosure and for enforcement of the rights and remedies of Lender under this Security Instrument. In the event that any provision of this Security Instrument shall be inconsistent with any provision of the laws of Alabama, the laws of Alabama shall govern over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with Alabama law.

**59. Indemnification.** Owner shall indemnify, defend and hold harmless Lender from all reasonable out-of-pocket losses, damages and expenses, including reasonable attorney's fees, incurred in connection with any suit or proceeding in or to which Lender may be made a party for the purpose of protecting the lien of this Mortgage.

**60. Counterparts.** If this agreement is executed by more than one party, it may be executed in multiple counterparts, each of which shall be an original and all of which will constitute a single agreement.

**61. Request For Notice.** Owner requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address hereinabove set forth.

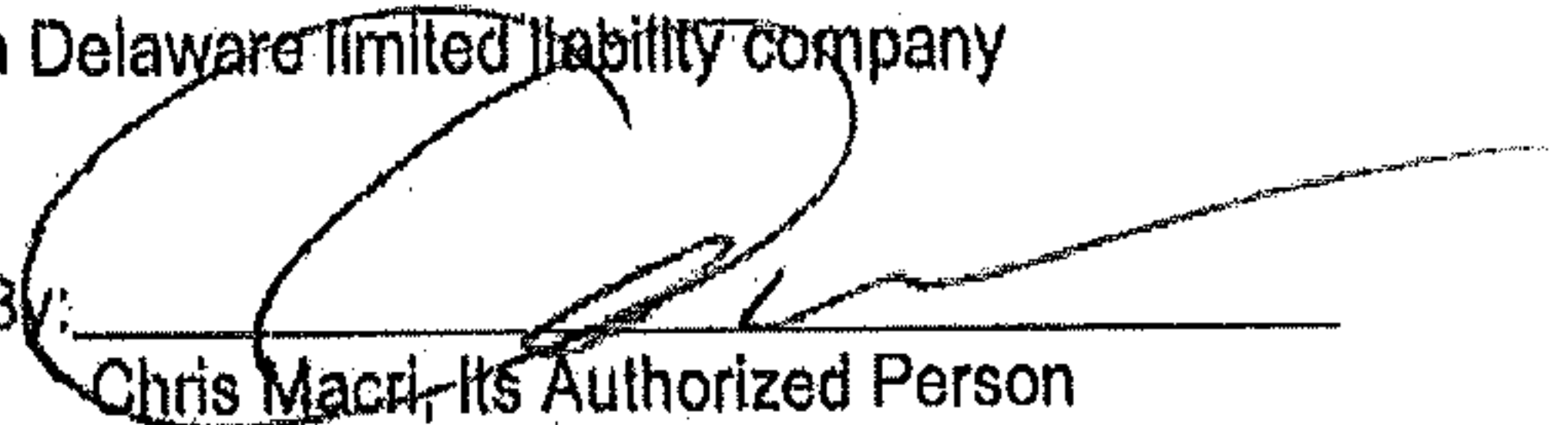
**62. Notice.** THIS WRITTEN AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**63. WAIVER OF JURY TRIAL.** EACH OF OWNER AND LENDER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

[Signature on following Page]

**OWNER:**

MONOMOY PROPERTIES AL 2 SPV, LLC,  
a Delaware limited liability company

By:   
Chris Macri, Its Authorized Person

**CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of \_\_\_\_\_            ) ss.

On \_\_\_\_\_, 2024, before me, \_\_\_\_\_, Notary Public, personally appeared **CHRIS MACRI**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

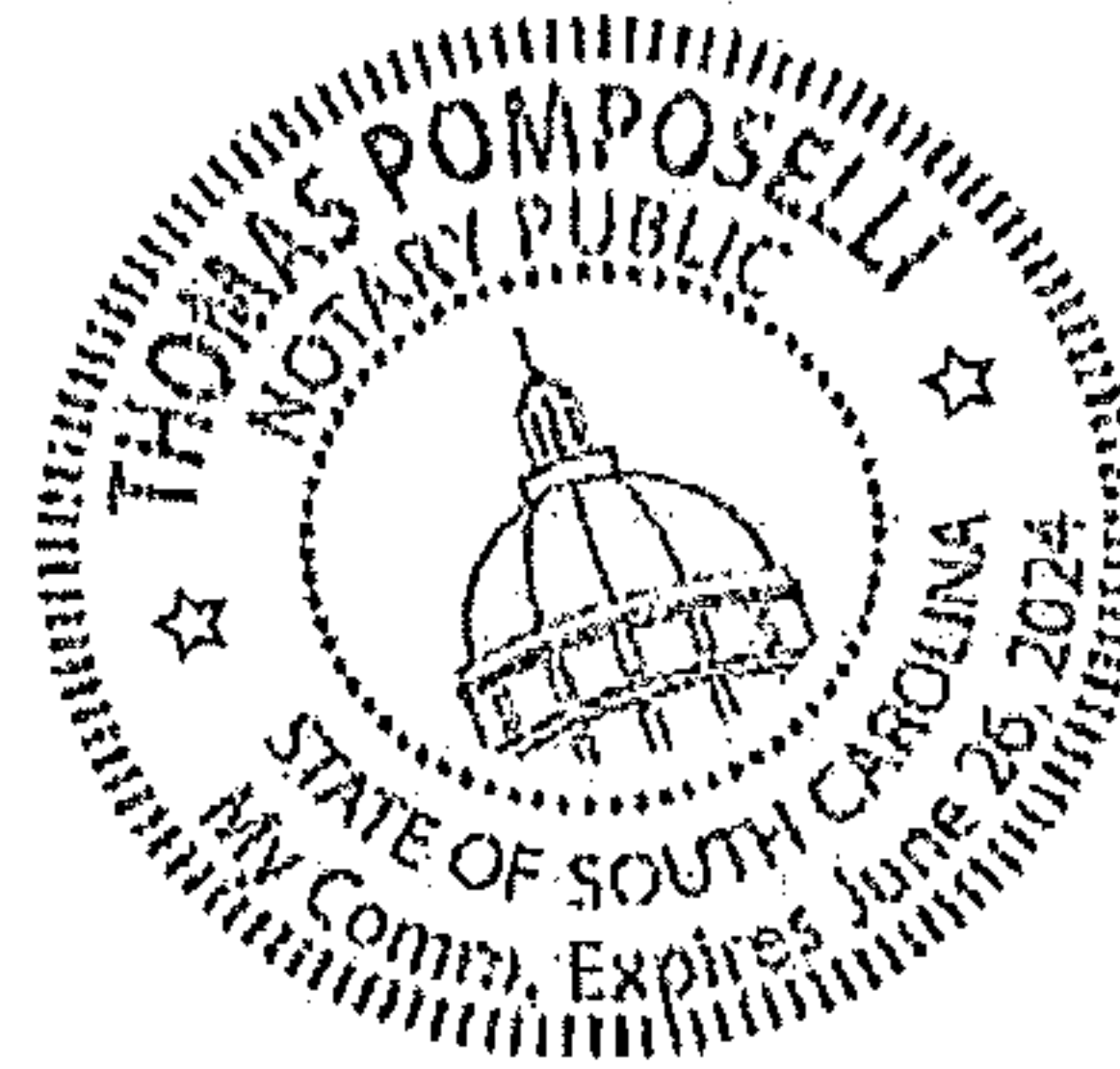
STATE OF SOUTH CAROLINA

County of Bedford

)  
) ss.  
)

BE IT KNOWN, that on this 14 day of March, 2024 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **CHRIS MACRI**, the Authorized Person, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within Instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my name and affixed my official seal the day and year last above written.



Thomas Pomposelli  
Notary Public

My commission expires 6/26 2024

**EXHIBIT A**

(Legal Description of Real Property)

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 21 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA, DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 21 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA; THENCE RUN WEST ALONG THE SOUTH SECTION LINE 1048.89 FEET TO A POINT ON THE NORTHEAST RIGHT OF WAY OF INTERSTATE HIGHWAY #65; THENCE TURN RIGHT 55 DEGREES 31 MINUTES AND RUN NORTHWEST 237.57 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID INTERSTATE HIGHWAY #65 AND THE NORTHERLY RIGHT OF WAY OF SHELBY COUNTY HIGHWAY #26, THENCE TURN RIGHT 83 DEGREES 10 MINUTES 26 SECONDS AND RUN NORTHEAST 210.0 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF SAID HIGHWAY #26 AND THE POINT OF BEGINNING; THENCE TURN LEFT 84 DEGREES 14 MINUTES 34 SECONDS AND RUN NORTHWEST 360.00 FEET; THENCE TURN RIGHT 73 DEGREES 28 MINUTES 36 SECONDS AND RUN NORTHEAST 236.82 FEET; THENCE TURN RIGHT 58 DEGREES 47 MINUTES 24 SECONDS AND RUN SOUTHEAST 200.87 FEET; THENCE TURN RIGHT 92 DEGREES 09 MINUTES 06 SECONDS AND RUN SOUTHWEST 141.51 FEET; THENCE TURN LEFT 83 DEGREES 39 MINUTES 14 SECONDS AND RUN SOUTHEAST 74.16 FEET TO A POINT ON THE NORTHWEST RIGHT OF WAY OF SAID HIGHWAY #26, SAID POINT BEING ON A CLOCKWISE CURVE HAVING A DELTA ANGLE OF 21 DEGREES 19 MINUTES 59 SECONDS, RADIUS OF 945.79 FEET, TANGENT OF 178.13 FEET, AND A CHORD OF 350.10 FEET; THENCE TURN RIGHT 96 DEGREES 06 MINUTES 45 SECONDS TO TANGENT AND RUN ALONG THE ARC OF SAID CURVE 352.13 FEET TO THE POINT OF BEGINNING, BEING SITUATED IN SHELBY COUNTY, ALABAMA.

Tax Parcel Nbr: 23-1-12-0-000-063.000Property Address: 1959 Fulton Springs Rd., Alabaster, AL

**SOURCE OF TITLE:** Title acquired through Deed of Conveyance executed by M & F Investments, LLC to Monomoy Properties AL 2 SPV, LLC dated August 31, 2016 in Instrument No. 2016060909000328170.



**Filed and Recorded**  
**Official Public Records**  
**Judge of Probate, Shelby County Alabama, County**  
**Clerk**  
**Shelby County, AL**  
**03/18/2024 12:48:23 PM**  
**\$647.50 PAYGE**  
**20240318000073770**

*Allen S. Bayal*