

**2014-008767**

**Klamath County, Oregon**

**08/22/2014 11:54:09 AM**

**Fee: \$217.00**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Mechanics Bank  
725 Alfred Nobel Drive  
Hercules, CA 94547-5610  
Attention: Walnut Creek – Real Estate Industries Group

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**CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING  
(Line of Credit Instrument)**

**LINE OF CREDIT INSTRUMENT.** (a) This Deed of Trust is a LINE OF CREDIT INSTRUMENT. (b) The maximum principal amount to be advanced pursuant to the Note (defined in Section 1.24 below) is Two Million Six Hundred Sixty Two Thousand Five Hundred and No/100 Dollars (\$2,662,500.00). (c) The maturity date of the Note is no later than August 10, 2017 (subject to extension or conversion which could result in a Maturity Date as late as August 10, 2023). (d) The maximum principal amount to be advanced pursuant to the Note may be exceeded by advances necessary to complete any construction pursuant to ORS 86.155(2)(c).

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Deed of Trust”) is given as of August 13, 2014, by Argo Klamath Two LLC, a Delaware limited liability company (“Grantor”), whose address is set forth below, as Grantor, to First American Title Insurance Company, whose address is set forth below, as Trustee, for the benefit of Mechanics Bank, a California banking corporation, whose address is set forth below, as Lender.

## **ARTICLE 1**

### **DEFINITIONS**

As used herein, the following terms shall have the following meanings (and all initially-capitalized terms used herein and not otherwise defined herein shall have the same meanings given such terms in the Loan Agreement, as defined below):

**1.1 Accounts.** All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Deed of Trust or any other of the Loan Documents (as hereinafter defined), including, without limitation, the Borrower's Fund Account established and maintained in accordance with the Loan Agreement (as hereinafter defined), and any other accounts established pursuant to any Loan Document for the disbursement of loan proceeds, or the required deposit of Rents or other Property proceeds (including insurance or condemnation proceeds), together with all investments made in the name of such accounts and all interest and other proceeds thereof.

**1.2 Awards.** All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Grantor, including any awards and payments for any taking of all or a portion of the Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Property.

**1.3 Condemnation.** Any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any governmental authority or by any other person acting under or for the benefit of a governmental authority

**1.4 Entity Guarantors.** Collectively, the following: (i) Argo K Falls, LLC, an Oregon limited liability company, (ii) Michael Karasik, as Trustee of the Michael Karasik and Cynthia Bolton-Karasik Revocable Trust, as amended and restated on October 4, 2010; and (iii) Stephen B. Jaeger, as Trustee of the Stephen B. Jaeger Living Trust.

**1.5 Environmental Indemnity.** The Unsecured Environmental Agreement and Indemnity, dated as of even date herewith, by Grantor and Guarantor in favor of Lender, as the same may be amended or otherwise modified. Anything in this Deed of Trust or the other Loan Documents to the contrary notwithstanding, the obligations of Grantor under the Environmental Indemnity are not and shall not be secured by this Deed of Trust.

**1.6 Event(s) of Default.** The happenings and occurrences described in Article 6 of this Deed of Trust.

**1.7 Fixtures.** All fixtures now or hereafter affixed or attached to, or installed in, or used in connection with, the Land or Improvements, whether or not permanently affixed thereto, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

**1.8 Grantor.** The entity named as such in the preamble of this Deed of Trust, and its heirs, administrators, executors, successors and assigns and their successors in interest in and to the Property.

**1.9 Grantor's Address.** 770 Tamalpais Drive, #401B, Corte Madera, CA 94925.

**1.10 Guarantor.** Collectively, the Individual Guarantors and the Entity Guarantors.

**1.11 Impositions.** All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for an easement or agreement maintained for the benefit of the Property which at any time prior to or after the execution of the Loan Documents may be assessed, levied, or imposed upon the Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Grantor or any of its properties.

**1.12 Improvements.** All of Grantor's interest in any buildings, improvements (including, without limitation, all of Grantor's interest in any on-site and off-site infrastructure improvements used in connection with the Land), alterations or appurtenances now, or at any time hereafter, located upon the Land or any part thereof.

**1.13 Individual Guarantors.** Collectively, the following: Michael Karasik and Stephen B. Jaeger.

**1.14 Insurance Proceeds.** The insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof to the extent they relate to the Property, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising. Insurance Proceeds do not include proceeds from insurance policies maintained by the subtenant of the building to be constructed on the Property with the Loan proceeds.

**1.15 Land.** The real property described in Exhibit A attached hereto.

**1.16 Leases.** Any and all leases, subleases, licenses, concessions or grants of other possessory interest now or hereafter in force, oral or written, covering or affecting the Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Grantor thereunder.

**1.17 Lender.** Mechanics Bank and its respective successors and assigns and the holders, from time to time, of the Note.

**1.18 Lender's Address.** 725 Alfred Nobel Drive, Hercules, CA 94547.

**1.19 Lender Group.** (a) Lender; (b) any entity controlling, controlled by or under common control with Lender; (c) the directors, officers, employees and agents of Lender and such other entities; and (d) the successors, heirs and assigns of the entities and persons described in foregoing clauses (a) through (c).

**1.20 Loan Agreement.** That certain Construction Loan Agreement dated as of even date herewith between Grantor and Lender.

**1.21 Loan.** The loan in the maximum principal amount of \$1,960,000.00 made to Grantor pursuant to the Loan Documents.

**1.22 Loan Documents.** This Deed of Trust, the Note, the Loan Agreement, and any other documents which Grantor or any other party or parties have executed and delivered or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

**1.23 Net Proceeds.** When used with respect to any Condemnation Awards or Insurance Proceeds, "Net Proceeds" means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys' fees, incurred in the collection of such gross proceeds.

**1.24 Note.** The promissory note, dated of even date with this Deed of Trust, made by Grantor to the order of Lender, in the principal amount of \$2,662,500.00 secured by this Deed of Trust, together with all extensions, renewals, modifications, substitutions and amendments thereof, including in particular in the event of a Conversion, the Term Note, as each term is defined in the Loan Agreement.

**1.25 Obligations.** All present and future debts, obligations and liabilities of Grantor to Lender and/or Trustee arising pursuant to, and/or on account of, the provisions of this Deed of Trust, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all expenses, indemnification payments, fees and other amounts due at any time under this Deed of Trust or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Grantor is required to perform, observe or comply with pursuant to this Deed of Trust or any of the other Loan Documents; and (d) to pay and perform all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust. Guarantors' obligations under the Guaranty (as defined in the Loan Agreement) shall not constitute "Obligations" hereunder and are not secured by this Deed of Trust and the obligations of Grantor and Guarantor under the Environmental Indemnity are not and shall not be secured by this Deed of Trust.

**1.26 Permitted Encumbrances.** (i) Any matters set forth in any policy of mortgagee title insurance issued to Lender which are acceptable to Lender as of the date hereof, (ii) the liens and security interests evidenced by this Deed of Trust, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, (iv) other liens and security interests (if any) in favor of Lender, (v) the rights of tenants as of the date hereof, if any, pursuant to Leases approved by Lender and the rights of future tenants under any Leases made in accordance with the Loan Documents, and the assignment of such Leases pursuant to this Deed

of Trust, and (vi) any matters arising after the date hereof which may be acceptable to Lender or any holder of this Deed of Trust in its sole and absolute discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Grantor's ability to repay the Obligations.

**1.27 Personalty.** All furniture, furnishings, equipment, machinery, trade fixtures and all other tangible and intangible personal property (other than the Fixtures) now owned or hereafter acquired by Grantor which are now or hereafter used or owned in connection with the Land and/or the Improvements or located in, upon or about the Land and/or the Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof, including without limitation:

- (a) all personal property located on the Land or Improvements used in the operation or occupancy of the Land or Improvements or in any construction on the Land or Improvements, including, but not limited to, all furniture and furnishings, machinery, fixtures, goods, office equipment, machine tools, apparatus, supplies, materials, trade fixtures, building service equipment, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or air conditioning purposes, or for sanitary or drainage purposes, or for the removal of dust, refuse or garbage), partitions, appliances, ranges, refrigerators, cabinets, laundry equipment, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games, recreational and swimming pool equipment and incinerators, and all vehicles and accessories, tools, appurtenances, dies, jigs, chattels and parts;
- (b) all of Grantor's rights and interest to any general intangibles relating to the development or use of the Land or Improvements, including, but not limited to, all development rights, governmental permits relating to construction on the Land or Improvements, all tentative or final map approvals, all management agreements, franchise agreements, service contracts, other contracts or agreements, all names under or by which the Land or Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, all trademarks and goodwill and all interests in any owner's or member's association in any way relating to the Land or Improvements;
- (c) all water stock relating to the Land or Improvements, all shares of stock or other evidence of ownership of any part of the Land or Improvements that is owned by the Grantor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for owning, managing or operating any part of the Land or Improvements;
- (d) all of Grantor's rights and interest to any plans and specifications prepared for construction of improvements on the Land or Improvements and all studies, data and drawings related thereto; and also all contracts and agreements of Grantor

relating to the plans and specifications or to the studies, data and drawings, or to the construction of improvements on the Land or Improvements;

- (e) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into by Grantor with respect to the sale to any purchasers of any part of the Land or Improvements, together with all deposits and other proceeds of the sale thereof;
- (f) all damages, royalties and revenues of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land;
- (g) all deposits made with or other security given to utility companies by Grantor with respect to the Land or Improvements, and all advance payments of insurance premiums made by Grantor with respect thereto and all claims or demands with respect to insurance;
- (h) any causes of action deemed to be assigned to Lender under this Deed of Trust;
- (i) all substitutions, renewals, improvements, attachments, accessions, additions and replacements to any of the foregoing;
- (j) engineering, accounting, title, legal, and other technical or business data concerning the Property, including software, which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and
- (k) all collections, proceeds, insurance proceeds and products of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation Award or otherwise), insurance proceeds paid or owing as a result of any damage to any of the foregoing, and all documents, instruments, general intangibles, chattel paper and accounts which may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records relating to any of the foregoing; and
- (l) all insurance policies under which Grantor is the beneficiary that cover any of the Land, the Improvements, the Fixtures, any other Personalty described in this paragraph, and any rights, benefits and proceeds arising from such insurance policies.

**1.28 Property.** The Land, the Improvements, the Fixtures, the Personalty, the Awards, the Rents, the Leases and the Accounts, together with: (i) all rights, privileges, permits, licenses, rights-of-way, easements, appendages and appurtenances of the Land and/or the Improvements belonging or in any way appertaining thereto and all right, title and interest of Grantor in and to any streets, ways, alleys, or strips of land adjoining the Land or any part thereof; and (ii) all the estate, right, title, interest, claim or demand whatsoever of Grantor, either at law or in equity, therein.

**1.29 Rents.** All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use or enjoyment of all or any portion of the Property.

**1.30 Transfer.** Any direct or indirect sale, assignment, conveyance or transfer, by Grantor, whether made voluntarily or by operation of law or otherwise, and whether made with or without consideration.

**1.31 Trustee.** The person, persons, or entity named as such in the preamble of this Deed of Trust and, as the case may be, his, their or its successors and assigns.

**1.32 Trustee's Address.** 200 SW Market Street, Suite 250, Portland, OR 97201.

## **ARTICLE 2**

### **GRANT**

**2.1 Grant.** Grantor hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Trustee, in trust for Lender, with power of sale and right of entry and possession, the Property, to have and to hold the Property unto Trustee, its successors and assigns forever, for the purpose of securing the Obligations, provided that Grantor shall retain possession of the Property until the occurrence of an Event of Default.

**2.2 Condition of Grant.** At such time as Grantor shall pay or cause to be paid, performed and discharged all Obligations in full, the Loan Documents and the estate and rights granted by Grantor shall cease, terminate and become void (except those obligations that expressly survive the reconveyance of this Deed of Trust shall continue), and shall be released or reconveyed by Lender, at the cost and expense of Grantor.

## **ARTICLE 3**

### **SECURITY AGREEMENT AND FIXTURE FILING**

**3.1 Security Agreement.** This Deed of Trust constitutes a security agreement between Grantor and Lender with respect to the Personalty, the Awards, the Leases, the Rents, the Accounts, and the Fixtures (collectively, the "Collateral") in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code (the "UCC").

**3.2 Security Interest.** In order to further secure the payment, observance, performance and discharge of the Obligations, Grantor hereby grants to Lender a security interest under the UCC in the Collateral and Lender shall have all the rights with respect to the Collateral afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded Lender by the Loan Documents.

**3.3 Financing Statements.** Lender is authorized to prepare and file such financing statements as Lender may reasonably consider necessary, and Grantor agrees to and shall execute and deliver to Lender, in form reasonably satisfactory to Lender, such other instruments or documents, and to take any other action, as Lender may, from time to time in its reasonable

judgment, consider necessary, to create, perfect and preserve Lender's liens upon the Collateral. Lender may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be necessary under applicable law to so create, perfect and preserve such liens and Grantor shall reimburse Lender for the reasonable costs thereof.

**3.4 Fixture Filing.** This Deed of Trust is being recorded as a fixture filing and covers goods which are or are to become fixtures on the Land and/or the Improvements. This fixture filing is governed by the UCC. The addresses of Lender and Grantor shall constitute the addresses of the secured party and debtor, respectively, with respect to any such fixture filing.

#### **ARTICLE 4** **ASSIGNMENT OF LEASES AND RENTS**

**4.1 Assignment of Leases and Rents.** Grantor hereby absolutely and irrevocably assigns to Lender all of Grantor's rights, title and interest in and to the Leases and Rents, to be applied against the Obligations. Grantor hereby appoints Lender its true and lawful attorney-in-fact, with the right, at Lender's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Grantor's or Lender's name, for all Rents. This instrument constitutes an absolute and present assignment of the Leases and Rents. Notwithstanding the foregoing assignment, so long as (but only so long as) no Event of Default has occurred which remains uncured, Grantor is given a license to collect, receive, take, use and enjoy such Rents, as they become due and payable, but not more than one month in advance thereof; provided that such license shall not apply to Rents constituting cash or other consideration received or payable in return for, or in connection with, the termination or modification of any Lease. This assignment shall be fully operative without any further action on the part of either party; and specifically, Lender, subject to the license described in the preceding sentence, shall be entitled at its option to collect all Rents from the Property whether or not Lender takes possession of the Property and to exercise any other remedies allowed by statute or under common law including, without limitation, any remedy allowed under California Civil Code Section 2938 or Oregon law. Lender neither has nor assumes any obligations as lessor or landlord with respect to any Lease, and this assignment shall not be deemed or construed to constitute Lender or Trustee as a mortgagee in possession nor obligate Lender or Trustee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Grantor shall execute and deliver to Lender any notification, financing statement, or other document reasonably required by Lender to perfect or provide notice of the foregoing assignment as to any such Lease.

**4.2 No Merger of Leasehold Estates.** If both the lessor's and lessee's estate under any Lease, or any portion thereof, becomes vested at any time in one owner, this Deed of Trust and the lien created hereby shall not be adversely affected by the application of the doctrine of merger unless Lender so elects in writing by recording a written declaration so stating. Unless and until Lender so elects, Lender and any lessor and lessee shall continue to have and enjoy all of the rights and privileges to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Property, any Leases then existing and affecting all or any portion of the Property shall not be destroyed or terminated by merger or by the foreclosure unless Lender or any purchaser at the sale so elects. No act by or on behalf of Lender or such



purchaser shall constitute a termination of any Lease unless Lender gives written notice thereof to the tenant or subtenant affected.

**4.3 Assignment to Lender Controlling.** Any rights of Trustee in the Leases and Rents created under Article 2 shall be subject to the rights of Lender in the Leases and Rents created under this Article 4.

## **ARTICLE 5**

### **COVENANTS AND REPRESENTATIONS AND WARRANTIES**

**5.1 Covenants.** Until all of the Obligations shall have been paid and performed in full, Grantor hereby covenants and agrees as follows:

**5.1.1 Payment and Performance** Grantor will make due and punctual payment of the Obligations as and when due under the Note and Loan Agreement. Grantor will timely and properly perform and comply with all of the covenants, agreements and conditions imposed upon it by this Deed of Trust and the other Loan Documents and will not permit an Event of Default to occur hereunder or thereunder. Time shall be of the essence in this Deed of Trust.

**5.1.2 Impositions.** Grantor (a) will pay in full and discharge before delinquency all Impositions, and (b) will furnish to Lender, upon demand, the receipted bills for such Impositions prior to the day upon which the same shall become delinquent. If, by law, any Imposition may be paid in installments, Grantor may pay the same in such installments as the same become due. Impositions shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Grantor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Deed of Trust or any of the other Loan Documents.

**5.1.3 Compliance with Laws.** Grantor will promptly and faithfully comply with, conform to, and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every insurance rating bureaus having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Property.

**5.1.4 Permitted Contests.** Grantor shall not be required to pay any of the Impositions, or to comply with any law, so long as Grantor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Impositions or enforcement of the law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) neither Lender nor

Trustee is subjected to any Claim (as defined in the Loan Agreement) as a result of such contest, and (d) Grantor provides assurances satisfactory to Lender (including the establishment of an appropriate reserve account with Lender) of its ability to pay such Impositions or comply with such law in the event Grantor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Grantor shall indemnify and save Lender and Trustee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Grantor shall comply with such law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

**5.1.5 Repair and Alterations.**

- (a) Grantor will keep the Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Property. Grantor will not permit the Improvements to be removed, demolished or materially altered without the prior written consent of Lender.
- (b) Grantor will not commit or knowingly permit any waste of the Property or any part thereof, or make or permit to be made any alterations or additions to the Property which would have the effect of materially diminishing the value thereof, or make or permit to be made any other alterations or additions to the Property, of a material nature, without the prior written consent of Lender.
- (c) Except to the extent permitted by the following sentence, no Personalty shall be removed, demolished or materially altered without the prior written consent of Lender. Grantor may remove and dispose of, free from the lien of this Deed of Trust, such Personalty as from time to time become worn out or obsolete, provided that, either (i) at the time of, or prior to, such removal, any such Personalty is replaced with other Personalty which is free from liens other than Permitted Encumbrances and has a value at least equal to that of the replaced Personalty (and by such removal and replacement Grantor shall be deemed to have subjected such new Personalty to the lien of this Deed of Trust), or (ii) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Personalty is sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Lender to be applied to the prepayment of the principal of the Loan.

**5.1.6 Insurance.** Grantor shall maintain, or cause to be maintained by the tenant under any Lease, insurance as is required under Section 4.7 of the Loan Agreement.

### **WARNING**

Unless Grantor provides Lender with evidence of the insurance coverage as required herein, Lender may purchase insurance at Grantor's expense to protect Lender's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Lender purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Lender purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**5.1.7 Performance of Leases and Other Agreements.** Grantor shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases and under any other agreements to which it is a party with respect to the Property, now or hereafter existing, on the part of the owner of the Property to be kept and performed. Grantor shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any such Lease or allow the tenant, lessee or licensee thereunder to terminate the lease, withhold payment or rent and shall not further assign any such Lease or any Rents. Grantor, at no cost or expense to Lender, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under such Leases. Grantor will immediately notify Lender in writing of any notice of default received by Grantor from any tenant under any Lease. Grantor shall comply with all provisions of the Loan Agreement regarding Leases.

**5.1.8 Casualty, Condemnation and Insurance Proceeds.** Grantor shall give prompt Notice to Lender of any casualty to the Property in excess of Twenty Five Thousand Dollars (\$25,000) ("Casualty") or any Condemnation or threatened Condemnation of the Property or any portion thereof. Lender is authorized in its own name or, if in Lender's reasonable judgment Grantor is not prosecuting or defending a claim with respect to a Casualty or Condemnation, in Grantor's name, to commence, appear in and prosecute, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any claim in connection therewith. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any payment all of its reasonable expenses in connection therewith. However, so long as no Event of

Default has occurred and Grantor is diligently pursuing its rights and remedies with respect to a claim, Lender will obtain Grantor's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such claim in Grantor's name. Grantor agrees to diligently assert its rights and remedies with respect to each claim and to promptly pursue the settlement and compromise of each claim subject to Lender's prior written approval, which approval shall not be unreasonably withheld or delayed. If, prior to the receipt by Lender of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of this Deed of Trust, Lender shall have the right to receive such funds (a) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on this Deed of Trust shall have been sought or recovered or denied), and (b) to the extent necessary to reimburse Lender for its expenses. If any Condemnation Award or Insurance Proceeds are paid to Grantor, Grantor shall receive the same in trust for Lender. Within ten (10) days after Grantor's receipt of any Condemnation Awards or Insurance Proceeds, Grantor shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Grantor agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be reasonably requested by Lender to confirm the grant and assignment to Lender of any Condemnation Award or Insurance Proceeds.

**5.1.9 Utilization of Net Proceeds.** Net Proceeds must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Event of Default (other than an Event of Default that could be cured by the application of the Net Proceeds to the restoration of the Property) shall exist and only if in the reasonable judgment of Lender (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Lender for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Lender, such approval not to be unreasonably withheld or delayed and (iii) the restoration can be completed prior to the final maturity of the Loan. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Lender for that purpose, must be deposited in an interest-bearing account with Lender, which account will be assigned to Lender as additional security for the Loan. The account will be opened, managed and controlled in a manner consistent with, and subject to, the provisions of the Loan Agreement governing a Grantor's Deposit Account, including those provisions permitting Lender to require Grantor to deposit funds in the event of a deficiency in the funds available to complete restoration as herein contemplated. Disbursements of funds from the account will be made in a manner consistent with, and subject to, the requirements for the closing and funding of the Loan and the terms of this Agreement regarding the disbursement of Loan proceeds.

**5.1.10 Payment of Rents.** Grantor hereby agrees that the respective lessees under the Leases, upon notice from Lender of the occurrence of an Event of Default, shall thereafter pay to Lender the Rents due and to become due under the Leases without any obligation to determine whether an Event of Default in fact exists.

**5.1.11 Inspection.** Lender or its agent shall have the right to enter and inspect the Property at all reasonable times and with reasonable notice to Grantor. Lender shall have the right to enter onto the Property, at all reasonable times, to inspect and test the Property for the existence of Hazardous Materials (as defined in the Environmental Indemnity) on the Property and to determine the compliance of the Property and its use with any law, rule or regulation relating to industrial hygiene or environmental conditions, including soil and ground water conditions and the compliance of the Grantor and the Property with the conditions and covenants set forth herein with respect to Hazardous Materials.

**5.1.12 Use of Property.** Grantor shall not use the Property or any part thereof, or allow the same to be used or occupied, for any unlawful purpose, or in violation of any certificate of occupancy or other permit or certificate, or any law, ordinance or regulation, covering or affecting the use or occupancy thereof. Grantor will not suffer any act to be done or any condition to exist on the Property or any part thereof or any article to be brought thereon, which may be dangerous (unless safeguarded as required by law) or which may constitute a nuisance, public or private, or which may void or make voidable any insurance then in force with respect thereto. No part of the Property constitutes all or any part of the principal residence of Grantor if Grantor is an individual.

**5.1.13 Environmental Indemnity.** The representations, warranties and covenants of Grantor set forth in the Environmental Indemnity are hereby incorporated herein by this reference. A default or material misrepresentation under the Environmental Indemnity shall constitute an Event of Default under this Deed of Trust.

**5.1.14 Organizational Documents.** Grantor shall comply with and observe all provisions of its organizational documents and any and all collective bargaining agreements and management agreements pertaining to the Property.

**5.1.15 Compliance With Laws.** Grantor will comply with and not violate, and cause to be complied with and not violated, all present and future laws applicable to the Property and its use, construction, and operation.

**5.1.16 Encumbrances.** Grantor will not permit any of the Property to become subject to any encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other lien or encumbrance against the Property, Grantor will promptly discharge the same by payment or filing a bond or otherwise as permitted by law or shall provide affirmative title insurance coverage with respect thereto in form and substance reasonably satisfactory to Lender. So long as Lender's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Lender, or Lender has been afforded such affirmative coverage, Grantor shall have the right to contest in good faith any claim, lien or encumbrance, provided that

Grantor does so diligently and without prejudice to Lender or delay in completing construction of the Improvements. Grantor shall give Lender Notice of any default under any lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

**5.1.17 Alienation and Further Encumbrances.** Grantor acknowledges that Lender has relied upon the principals of Grantor and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except as specifically allowed herein below in this Section, in the event that the Property or any part thereof or interest therein shall be sold (including any installment sales agreement), conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 5.1.7 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Grantor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily (each, a "Further Encumbrance"), without the prior written consent of Lender being first obtained, which consent may be withheld in Lender's sole discretion, then the same shall constitute a default hereunder and Lender shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article VI hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Grantor were prepaying the entire indebtedness secured hereby on the date of such acceleration.

For the purposes of this Section, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) Grantor shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, transfers or assignments of ownership interest in Grantor (or its constituent parties) may be undertaken without the consent of Lender in the following circumstances:

- (a) Gifts for estate planning purposes of any individual's interests in Grantor or in any of Grantor's general partners, members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be a default under this Deed of Trust so long as Grantor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Grantor remain unchanged following such gift or any replacement management is approved by Lender; or
- (b) Involuntary assignments or transfers caused by the death, incompetence or dissolution of Grantor, one of its constituent parties or the owner of one of its constituent parties are permitted if: (i) Grantor is reconstituted, if required, following such death, incompetence or dissolution, and (ii) those

persons responsible for the management and control of Grantor and the Property remain unchanged as a result of such death, incompetence or dissolution or any replacement management is approved by Lender.

In all cases where assignment of ownership interests is allowed pursuant to this Section, the proportionate ownership which is proposed to be transferred shall be calculated so as to take into account prior transfers or assignments. Furthermore, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) any guarantor of Grantor's obligation hereunder or under any of the other Loan Documents shall constitute a default hereunder and Lender shall have the right to exercise its various remedies described hereinabove; provided, however, ownership interests in any such guarantor may be transferred in a manner consistent with the allowable transfers of ownership interests in Grantor described above.

**5.1.18 Terrorism and Anti-Money Laundering.** Grantor shall, and shall cause each corporation, partnership, limited partnership, limited liability company or other legal entity whose signature, consent or authorization is required for Grantor to enter into, and perform its obligations under, the Environmental Indemnity and the other Loan Documents to, comply with applicable federal anti-terrorism and anti-money laundering laws and regulations. All payments by Grantor to Lender or from Lender to Grantor will only be made in Grantor's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time. Grantor shall provide Lender, from time to time, with such information as Lender determines to be necessary or appropriate to comply with the anti-money laundering laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of Grantor, any Authorizing Entity or other person or entity controlling or controlled by Grantor or any person or entity having a beneficial interest in Grantor, from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information. Grantor shall promptly notify Lender in writing should Grantor become aware of any change in the information set forth in these representations.

**5.2 Representations and Warranties of Grantor.** Grantor hereby represents and warrants to Lender as follows, and agrees to give written notice to Lender of any breach of such representations and warranties.

**5.2.1 Good Standing/Licensing.** Grantor is duly organized, validly existing and in good standing under the laws of its state of organization, is duly licensed or qualified to do business and is in good standing and is authorized to do business in every jurisdiction in which the nature of its businesses or properties makes such licensing or qualification necessary and where a failure to so qualify or be licensed would have a materially adverse effect on the business or operations of the Grantor, and is in

compliance with all laws, regulations, ordinances and orders of public authorities applicable to Grantor. Grantor has full power and authority to enter into and perform its obligation under the Loan Documents.

**5.2.2 No Conflict.** The Note and the other Loan Documents will not violate any provision of law (including, but not limited to any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Grantor is a party or by which Grantor or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or violate the partnership agreement of Grantor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Grantor, except as contemplated by the Note and the other Loan Documents, and no action with respect thereto by Grantor is required.

**5.2.3 Consents.** No consent or approval of any regulatory body, nongovernmental person or entity, including any creditor, member, partner or shareholder, as applicable, of Grantor is required for the execution, delivery and performance of the Note and the other Loan Documents.

**5.2.4 Suits.** There are no bankruptcy or insolvency proceedings, suits, proceedings or investigations pending or threatened against or affecting Grantor, any Guarantor or the Property, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Grantor, any Guarantor or the Property.

**5.2.5 Judgments.** No judgment, decree or order of any court or governmental or administrative agency or instrumentality has been issued against Grantor which has or may have any material adverse effect on the business or condition of Grantor.

**5.2.6 Information.** All information, reports, papers and data given to Lender with respect to Grantor or others obligated under the terms of the Loan Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matter thereof.

**5.2.7 Title/Right to Assign Leases.** Grantor has good and marketable title in fee simple to the Land and Improvements, and good and marketable title to the Collateral, and the right to assign the Leases and Rents to Lender free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims whatsoever.

**5.2.8 Compliance with Laws.** The Property and the current intended use thereof by Grantor comply in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over



the Property. In addition, the initial construction of the Improvements and any and all subsequent work or alterations were each performed and completed in compliance with all building codes in effect at the time any and all such work was performed in all material respects. The Property does not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

**5.2.9 Utilities.** All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Property for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Lender. The Property is free from delinquent water charges, sewer rents, taxes and assessments.

**5.2.10 Access.** All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Property have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Property without further condition or cost to Grantor.

**5.2.11 Condemnation.** No part of the Property has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Grantor's knowledge and belief, threatened or contemplated.

**5.2.12 Good Condition.** Except as disclosed in writing to Lender: (a) the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; (b) there exists no structural or other material defects or damages in the Property, whether latent or otherwise; and (c) Grantor has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

**5.2.13 Leases.** Grantor has not executed any prior assignment of the Leases or of its right, title and interest therein or in the Rents to accrue thereunder. Grantor has delivered a true, correct and complete schedule (the "Rent Roll") of all Leases affecting the Property as of the date hereof, which accurately and completely sets forth in all material respects for each such Lease, the following: the name of the Tenant, the Lease expiration date, extension and renewal provisions, the base rent payable, the security deposit held thereunder and any other material provisions of such Lease. Grantor has delivered to Lender a true and complete copy of Grantor's form Lease and all of the existing Leases assigned hereunder, together with all amendments, supplements and other modifications. Each Lease constitutes the legal, valid and binding obligation of Grantor and, to the best of Grantor's knowledge and belief, is enforceable against the Tenant

thereof. Except as previously disclosed in writing to Lender, no tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised. To the best of Grantor's knowledge, no default by Grantor or any other person under any existing Lease exists.

**5.2.14 Taxes.** Grantor has filed all Federal, state, county and municipal income tax returns required to have been filed by them and have paid all taxes which have become due pursuant to any assessments received by them, and Grantor does not know of any basis for additional assessment in respect to such taxes.

**5.2.15 Use of Borrowed Funds.** Grantor hereby represents and warrants to Lender that it intends to use the funds it is borrowing from Lender under the terms of the Note primarily for other than personal, family or household purposes.

**5.2.16 Flood Hazard.** The Property is not located within an area designated as a "flood plain" or "flood hazard area" according to applicable flood plain and flood control surveys.

**5.2.17 Organizational Documents.** A true and complete copy of Grantor's and the Entity Guarantors' organizational documents has been furnished to Lender, and there are no other agreements, oral or written, relating to Grantor or the Entity Guarantors as regards the ownership and governance of Grantor or the Entity Guarantors. All such organizational documents have been duly executed and delivered, are in full force and effect, and are binding upon and enforceable in accordance with their terms. No breach exists thereunder and no act has occurred and no condition exists or after giving effect to this Deed of Trust, the Environmental Indemnity and the other Loan Documents will exist, which, with the giving of notice or the passage of time, would constitute a breach thereunder.

**5.2.18 Insolvency.** Neither Grantor nor any Guarantor is insolvent and there has been no: (i) assignment made for the benefit of the creditors of any of them; (ii) appointment of a receiver for any of them or for the property of any of them; or (iii) bankruptcy, reorganization, or liquidation proceeding instituted by or against any of them.

**5.2.19 Defaults.** Neither Grantor nor any Guarantor is in default under any agreement to which Grantor or such Guarantor is a party, except for any default which would not have a material adverse effect on Grantor or such Guarantor or the prospect of repayment of the Obligations. The execution and delivery of the Environmental Indemnity and the other Loan Documents and the performance by Grantor and each Guarantor of their respective Indebtedness under the Environmental Indemnity and the other Loan Documents: (a) do not violate any applicable laws, and (b) do not conflict with, are not inconsistent with, and will not result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind which creates, represents, evidences or provides for any lien, charge or encumbrance upon any

of the assets of Grantor or any Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Grantor or any Guarantor is a party or by which Grantor or any Guarantor may be bound.

**5.2.20 ERISA.** Grantor is not and will not be an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; the assets of Grantor do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA; Grantor is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and transactions by or with Grantor are not and will not be subject to state statutes applicable to Grantor regulating investments of fiduciaries with respect to governmental plans.

**5.2.21 OFAC.** None of (i) Grantor; (ii) any Guarantor; (iii) any person or entity controlling or controlled by Grantor or any Guarantor; (iv) any person or entity having a beneficial interest in Grantor or any Guarantor, to the extent not a publicly held entity; (v) any person or entity for whom Grantor is acting as agent or nominee in connection with this transaction; (vi) any of the foregoing persons’ or entities’ partners, members, shareholders or other equity owners or their respective employees, officers, directors, representatives or agents; or (vii) to Grantor’s knowledge, any tenant of the Property, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on the Office of Foreign Asset Control of the United States Department of the Treasury’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

**5.2.22 Foreign Person.** Grantor nor any member or partner in Grantor is or will be, and no legal or beneficial interest of a member or partner in Grantor is or will be held, directly or indirectly, by a “foreign corporation”, “foreign partnership”, “foreign trust”, “foreign estate”, “foreign person”, “affiliate” of a “foreign person” or a “United States intermediary” of a “foreign person” within the meaning of IRC Sections 897 and 1445, the Foreign Investments in Real Property Tax Act of 1980, the International Foreign Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, or the regulations promulgated pursuant to such Acts or any amendments to such Acts.

**5.2.23 Broker Fees.** No brokerage fees or commissions are payable by or to any person in connection with the Loan as a result of any agreement of Grantor.

## **ARTICLE 6**

### **DEFAULT AND FORECLOSURE**

**6.1 Default.** The occurrence of any “Event of Default,” as defined in the Loan Agreement, shall constitute an Event of Default hereunder.

**6.2 Remedies.** If an Event of Default shall occur, Lender may, at its option, by or through Trustee or otherwise, in addition to any other rights or remedies otherwise set forth

hereunder or available to Lender under the Environmental Indemnity or any of the other Loan Documents or applicable law, exercise one or more or all of the following remedies:

**6.2.1 Acceleration.** Declare the unpaid portion of the Obligations to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

**6.2.2 Entry on Property.** To the extent not prohibited by law, enter upon the Property and take possession thereof and of all books, records, and accounts relating thereto.

**6.2.3 Operation of Property.** Obtain possession of the Property or appoint a receiver as provided in Section 6.2.6 below, in which case Lender, Trustee or the receiver, as the case may be, may, at its sole option (i) make all necessary or proper repairs and additions to or upon the Property, (ii) operate, maintain, control, make secure and preserve the Property, and (iii) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary (the costs of completing such Improvements shall be Expenses secured by this Deed of Trust and shall accrue interest as provided in the Loan Agreement and the other Loan Documents). Lender, Trustee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Beneficiary shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

**6.2.4 Judicial Proceedings.** Institute proceedings for the complete or partial foreclosure of this Deed of Trust or take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Deed of Trust (without being required to foreclose this Deed of Trust), or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Lender shall elect.

**6.2.5 Sale of Property.** Cause the Property and all estate, right, title and interest, claim and demand therein, or any part thereof to be sold as follows:

- (a) Lender may proceed as if all of the Property were real property, in accordance with subparagraph (d) below, or Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the premises without causing structural damage thereto, as if the same were personal property, and dispose of the same in accordance with subparagraph (c) below, separate and apart from the sale

of real property, with the remainder of the Property being treated as real property.

- (b) Lender may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or required by law) or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.
- (c) Should Lender elect to cause any of the Property to be disposed of as personal property as permitted by subparagraph (a) above, it may dispose of any part thereof in any manner now or hereafter permitted by Division 9 of the UCC or in accordance with any other remedy provided by law. Both Grantor and Lender shall be eligible to purchase any part of all of such property at any such disposition. Any such disposition may be either public or private as Lender may so elect, subject to the provisions of the UCC. Lender shall give Grantor at least five (5) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Grantor it shall constitute reasonable notice to Grantor.
- (d) Should Lender elect to sell the Property which is real property or which Lender has elected to treat as real property, upon such election Lender or Trustee shall give such Notice of Default and Election to Sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such Notice of Sale as may then be required by law, Trustee, at the time and place specified in the Notice of Sale, shall sell such Property, or any portion thereof specified by Lender, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of Section 6.2.5(e) hereof. Trustee for good cause may, and upon request of Lender shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Property consists of several lots or parcels, Lender may designate the order in which such lots or parcels may be offered for sale or sold, and may direct that such property be sold in one parcel, as an entirety, or in such parcels as Lender, in its sole discretion, may elect. Grantor expressly waives any right which it may have to direct the order in which any of the Property shall be sold, and its rights, if any, to require the Property be sold as separate tracts, lots, units, or parcels. Any person, including Grantor, Trustee or Lender, may purchase at the sale. Upon any sale Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty

whatsoever, express or implied; whereupon such purchaser or purchasers shall be let into immediate possession.

- (e) Upon any sale of the Property, whether made under a power of sale herein granted or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Deed of Trust, the Note and documents evidencing expenditures secured hereby shall be presented to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.
- (f) In the event of a sale or other disposition of any such Property or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals in the deed or deeds of facts (such as of a default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

**6.2.6 Receiver.** Lender shall be entitled, as a matter of strict right, without notice and ex parte, and without regard to the value or occupancy of the security, or the solvency of the Grantor, or the adequacy of the Property as security for the Note, to have a receiver appointed to enter upon and take possession of the Property, collect the Rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of the jurisdiction in which the Property is located. Lender or the receiver may also take possession of, and for these purposes use, any and all Personalty which is a part of the Property and used by Grantor in the rental or leasing thereof or any part thereof. The expense (including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. Lender shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Obligations in the order set forth in Section 6.6 hereof. The right to enter and take possession of the Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such Rents, issues and profits actually received by Lender.

**6.3 Separate Sales.** Any real property or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note, this Deed of Trust or the other Loan Documents, or pursuant to any other judicial proceedings under this Deed of Trust or the other Loan Documents, or pursuant to the power of sale granted herein, may be sold

in one parcel, as an entirety, or in such parcels, and in such manner or order as Lender, in its sole discretion, may elect.

**6.4 Remedies Cumulative and Concurrent.** The rights and remedies of Lender as provided in the Note, this Deed of Trust, the Environmental Indemnity and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Grantor or against other obligors or against the Property, or any one or more of them, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

**6.5 No Cure or Waiver.** Neither Lender's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligations, nor the exercise of any other right or remedy by Lender or Trustee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

**6.6 Payment of Costs, Expenses and Attorneys Fees.** Grantor agrees to pay to Lender immediately and without demand all costs and expenses incurred by Trustee and Lender in exercising or defending the rights and remedies under the Note and the other Loan Documents as provided in Section 11.6 of the Loan Agreement. This includes, without limitation, attorneys' fees and costs incurred by Lender to protect its interests in any bankruptcy and/or appellate proceeding. Lender shall be entitled to bid, at the sale of the Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the other Obligations as a credit bid, the equivalent of cash.

**6.7 Application of Proceeds.** From and after an Event of Default, the proceeds of any sale of all or any portion of the Property and the amounts generated by any holding, leasing, operation or other use of the Property shall be applied by Lender in the following order, or in such other order or proportion as Lender shall decide in its sole discretion:

- (a) first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same (including without limitation payment of any Impositions or other taxes);
- (b) second, to the extent allowed by law or the terms hereof or of any other Loan Document, to the payment of attorneys' fees and other legal expenses, including expenses and fees incurred on appeals, and legal expenses and fees of a receiver;

- (c) third, to the payment of all amounts advanced under this Deed of Trust or any other Loan Document (except for the Environmental Indemnity) to preserve the value of the Property;
- (d) fourth, to the payment of late charges and accrued and unpaid interest on the Obligations;
- (e) fifth, to the payment of the unpaid balance of the Obligations (except for that portion of the obligations that arises out of the Environmental Indemnity); and
- (f) sixth, to the payment of any amounts owing to Lender or the other Indemnified Parties (as defined in the Environmental Indemnity) under the Environmental Indemnity.

The balance, if any, shall be paid to the parties entitled to receive it under applicable law.

**6.8 Strict Performance.** Any failure by Lender to insist upon strict performance by Grantor of any of the terms and provisions of the Note, the Environmental Indemnity and the other Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Note, the Environmental Indemnity and the other Loan Documents, and Lender shall have the right thereafter to insist upon strict performance by Grantor of any and all of them.

**6.9 No Conditions Precedent to Exercise of Remedies.** Neither Grantor nor any other person now or hereafter obligated for payment of all or any part of the Obligations shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Grantor or of any other person so obligated to take action to foreclose on this Deed of Trust or otherwise enforce any provisions of the Environmental Indemnity, Loan Documents or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the Obligations.

**6.10 Environmental Default and Remedies.** In the event that any portion of the Property is determined to be "environmentally impaired" (as "environmentally impaired" is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as "affected parcel" is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Lender's or Trustee's rights and remedies under this Deed of Trust, Lender may, if applicable, elect to exercise its right under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Grantor to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining Lender's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Grantor knew or should have known of the activity by such lessee, occupant or user which caused or contributed



to the release or threatened release. All costs and expenses, including, but not limited to, attorneys' fees, incurred by Lender in connection with any action commenced under this Section 6.10, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate until paid, shall be added to the Indebtedness secured by this Deed of Trust and shall be due and payable to Lender upon its demand made at any time following the conclusion of such action.

**6.11 Recourse Obligations.** Unless otherwise explicitly provided in the applicable documents, all Obligations of Grantor under the Environmental Indemnity and any of the Loan Documents, are fully recourse as to Grantor and any general partner of Grantor (if Grantor is a partnership). Except as otherwise limited by applicable law, Lender shall be entitled to direct recourse to or to a deficiency from any and all assets of any such person.

## **ARTICLE 7**

### **MISCELLANEOUS**

**7.1 Further Assurances.** Grantor, upon the reasonable written request of Lender, will execute, acknowledge and deliver, or arrange for the execution, acknowledgment and delivery of, such further instruments as provided in Section 9.2 of the Loan Agreement.

**7.2 Recording and Filing.** Grantor, at its expense, will cause the Loan Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

**7.3 Notice.** All Notices required or which any party desires to give hereunder or under any other Loan Document shall be given in accordance with Section 11.2 of the Loan Agreement. Grantor hereby requests that a copy of any notice of default and every notice of sale hereunder be mailed to it as provided by law at the Grantor's Address.

**7.4 Covenants Running with the Land.** All covenants contained in the Loan Documents shall run with the Property.

**7.5 Severability.** In case any part of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Note, this Deed of Trust, the Environmental Indemnity, the other Loan Documents, and the remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

**7.6 Modification.** The Environmental Indemnity and the other Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

**7.7 Tax on Indebtedness or Deed of Trust.** In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Lender the obligation to pay the whole, or any part, of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing

in any way the laws relating to the taxation of deeds of trust, mortgages or debts as to affect the Deed of Trust or the Obligations, the entire unpaid balance of the Obligations shall, at the option of Lender, after thirty (30) days written notice to Grantor, become due and payable; provided, however, that if, in the opinion of Lender's counsel, it shall be lawful for Grantor to pay such taxes, assessments, or charges, or to reimburse Lender therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Obligations if a mutually satisfactory agreement for reimbursement, in writing, is executed by Grantor and delivered to Lender within the aforesaid period.

**7.8 Survival of Warranties and Covenants.** The warranties, representations, covenants and agreements set forth in the Environmental Indemnity and the other Loan Documents shall survive the making of the loan and the execution and delivery of the Note, and shall continue in full force and effect until the Obligations shall have been paid and performed in full. Notwithstanding the foregoing, any obligation contained in the Note, the Environmental Indemnity, or in any other Loan Documents that expressly so provides, shall survive the full payment and performance of the Obligations.

**7.9 Applicable Law.** This laws governing this instrument and the rights and obligations of the parties hereunder are described in Section 11.7 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

**7.10 Substitution of Trustee.** Lender, acting alone, may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder. Such instrument, executed, acknowledged and recorded in the manner required by law, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall (without conveyance from the preceding Trustee) succeed to all of the title, estate, rights, powers and duties of such preceding Trustee. Such instrument shall contain the name of the original Grantor, Trustee and Lender hereunder, the book and page or instrument number where this Deed of Trust is recorded and the name and address of the new Trustee. If a notice of default has been recorded, this power of substitution cannot be exercised until after the costs, fees, and expenses, of the then acting Trustee have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution.

**7.11 No Representations by Lender.** By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender, pursuant to the Environmental Indemnity and the other Loan Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender.

**7.12 Acceptance of Trust.** Trustee accepts the Trust created by this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record a provided by law.

**7.13 Statute of Limitations.** Grantor hereby waives any and all rights to plead any statute of limitations as a defense to any and all obligations secured by this Deed of Trust to the fullest extent allowed by law.

**7.14 JURY WAIVER AND JUDICIAL REFERENCE.** LENDER AND GRANTOR EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER LENDER OR GRANTOR AGAINST THE OTHER. THIS INCLUDES ANY CLAIM BY EITHER PARTY, CLAIMS BROUGHT BY GRANTOR AS A CLASS REPRESENTATIVE ON BEHALF OF OTHERS, AND CLAIMS BY A CLASS REPRESENTATIVE ON GRANTOR'S BEHALF AS A CLASS MEMBER (SO-CALLED "CLASS ACTION" SUITS). THIS PROVISION SHALL NOT APPLY IF, AT THE TIME AN ACTION IS BROUGHT, THE LOAN IS MAINTAINED IN A STATE WHERE JURY TRIAL WAIVERS ARE NOT PERMITTED BY LAW.

If a jury trial waiver is not permitted by law, the parties agree that all decisions of fact and law in any action brought in connection with any action, proceeding or counterclaim brought by either Lender or Grantor against the other shall be decided, at the option of either party, by a referee appointed by the court in accordance with applicable state reference procedures. The referee shall be a retired judge, agreed upon by the parties, from either the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Service, Inc. ("JAMS"). If the parties cannot agree on the referee, the party who initially selected the reference procedure shall request a panel of ten retired judges from either AAA or JAMS, and the court shall select the referee from that panel. The costs of the reference procedure, including the fee for the court reporter, shall be borne equally by the parties as the costs are incurred. If a party fails to pay its portion of the costs as incurred, then that party shall forfeit the right to prosecute or defend the action. The referee shall hear all pre-trial and post-trial matters, including requests for equitable relief; prepare an award with written findings of fact and conclusions of law; and apportion costs as appropriate. Judgment upon the award shall be entered in the court in which such proceeding was commenced and all parties shall have full rights of appeal. This provision will not be deemed to limit or constrain Lender's right to set off, to obtain provisional or ancillary remedies, to interplead funds in the event of a dispute, to exercise any security interest or lien Lender may hold in property, or to comply with legal process involving Grantor's accounts or other property.

**7.15 Compensation of Trustee.** Trustee shall be entitled to reasonable compensation for all services rendered or expenses incurred in the administration or execution of the trusts hereby created and Grantor hereby agrees to pay same. Trustee shall be indemnified, held harmless and reimbursed by Grantor for any liability, damage or expense, including attorneys' fees and amounts paid in settlement, which it may incur or sustain in the execution of this trust or in the doing of any act which it is required or permitted to do by the terms hereof or by law, provided, however, that Grantor shall not be obligated to indemnify Trustee with respect to any claim or loss to the extent arising from the negligent acts or willful misconduct of Trustee.

**7.16 Assignability.** Grantor acknowledges that Lender may grant and assign all or any portion of its beneficial interest under this Deed of Trust to one or more third parties. Grantor agrees that, upon such grant and assignment, such third parties shall be entitled to all of the rights, remedies and benefits provided to the Lender hereunder.

**7.17 Entire Agreement.** This Deed of Trust, Note, the Environmental Indemnity and the other Loan Documents constitute the entire agreement between or among the parties hereto with respect to the matters addressed therein, and supersede all prior oral or written communications or agreements with respect to such matters.

**7.18 Remedies.** No right, power or remedy given Lender by the terms of this Deed of Trust is intended to be exclusive of any other right, power or remedy. Each and every such right, power or remedy shall be cumulative and in addition to every other right, power or remedy given to Lender by the terms of any of the foregoing, by any statute or otherwise against Grantor or any other person.

**7.19 No Waiver.** No delay or omission by Lender in exercising any right or power arising from any default by Grantor shall be construed as a waiver of such default or as an acquiescence therein, nor shall any single or partial exercise thereof preclude any further exercise thereof. Lender may, at its option, waive any of the conditions herein and any such waiver shall not be deemed to be a modification of the terms hereof. No waiver of any event of default shall be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent event of default.

**7.20 Headings.** The article headings and the section and subsection captions are inserted for convenience of reference only and shall in no way alter or modify the text of such articles, sections and subsections.

**7.21 Attorneys' Fees.** If any action or proceeding is commenced to interpret or enforce the terms of this Deed of Trust, the prevailing party shall be entitled to attorneys' fees and costs, as well as the costs of such action or proceeding, including, without limitation, (a) attorneys' fees, costs and expenses incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapters 7 or 11 of the Bankruptcy Code or any successor thereto, and (b) attorneys' fees, costs and expenses incurred as a result of Lender exercising its rights to cure any Event of Default by Grantor under this Deed of Trust or any other Loan Document, or as a result of the foreclosure of the Deed of Trust, deed in lieu thereof, or trustee's sale thereunder.

**7.22 USA Patriot Act Notice.** Grantor hereby acknowledges having been notified by Lender that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended, the "Patriot Act"), Lender is required to obtain, verify and record information that identifies Grantor and any other obligor with respect to the Obligations, which information includes the name and address of Grantor and any such obligor and other information that will allow such Lender to identify Grantor and any such obligor in accordance with the Patriot Act.

**7.23 Joint and Several Obligations.** If Grantor is comprised of more than one entity or person, then the obligations imposed upon Grantor shall be joint and several obligations of all the entities and persons, and requests or demands from any one entity or person comprising Grantor shall be deemed to have been made by all such entities or persons. Notices to any one entity or person comprising Grantor shall be deemed to have been given to all entities and persons comprising Grantor.

**7.24 Time of Essence.** Time is of the essence to each and every provision of this Deed of Trust, the Note, the Environmental Indemnity and the other Loan Documents.

**7.25 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be one and the same instrument.

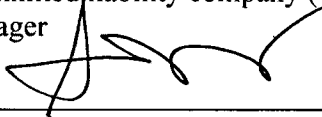
**7.26 Singular and Plural Terms.** Any defined term used in the plural in this Agreement shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class.

*[signature page follows]*

**IN WITNESS WHEREOF**, Grantor has executed this Deed of Trust as of the date first above written.

ARGO KLAMATH TWO LLC,  
a Delaware limited liability company,

By: Argo K Falls, LLC,  
an Oregon limited liability company  
Its Manager

By: Argonaut Investments, LLC,  
a Delaware limited liability company (with respect to Series 10)  
Its: Manager  
  
By: \_\_\_\_\_  
Name: Stephen B. Jaeger  
Title: Manager

STATE OF CALIFORNIA )  
COUNTY OF MARIN )

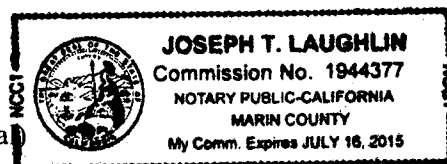
On August 13<sup>th</sup>, 2014 before me, Joseph T. Laughlin,  
Notary Public, personally appeared Stephen B. Jaeger, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/~~she~~/they executed the same in his/her/their  
authorized capacity(ies), 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: Joseph T. Laughlin

(seal)



**EXHIBIT A**

**Legal Description**

**Real property in the City of Klamath Falls, County of Klamath, State of Oregon, described as follows:**

LOT 10, TRACT 1522, KLAMATH MALL, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK, KLAMATH COUNTY, OREGON.