

**2016-007320**

**Klamath County, Oregon**

**07/12/2016 09:15:02 AM**

**Fee: \$162.00**

Recording Requested by and after  
Recording Return to:  
Winston & Strawn LLP  
101 California Street, 34<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Loren Kessler Higgins

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Loan No. 070004693

**LINE OF CREDIT INSTRUMENT**

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

Among

PACIFICA SL KLAMATH FALLS LLC, as grantor and debtor,

FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee,

and

HEALTHCARE FINANCIAL SOLUTIONS, LLC, as beneficiary and secured party

With respect to the following property:  
2130 North Eldorado Avenue  
Klamath Falls, Oregon

Dated as of July 8, 2016

**THIS INSTRUMENT IS TO BE INDEXED AS BOTH A DEED OF TRUST AND AS A  
FIXTURE FILING**

THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN ACCORDANCE WITH ORS  
79.0502(3).

The maturity date of the Loan Agreement (as hereinafter defined) secured by this Deed of Trust, exclusive of any option to renew or extend such maturity date, is July 8, 2019. The maximum principal amount to be advanced pursuant to the Loan Agreement is \$21,420,000.00; however, such maximum principal amount may be exceeded by principal advances made to complete construction on the property or for the reasonable protection of the property pursuant to ORS 86.155.

Tax Account Number(s) of Mortgaged Property: Account Nos. R170442, R170451

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

This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "**Deed of Trust**") is executed as of July 8, 2016, by **PACIFICA SL KLAMATH FALLS LLC**, an Oregon limited liability company, whose organizational number is 1180002-98 ("**Grantor**"), whose address for notice hereunder is 1775 Hancock Street, Suite 200, San Diego, California 92110 Attn: Deepak Israni, to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation ("**Trustee**"), having an address at 30 North LaSalle Street, Suite 2700, Chicago, Illinois 60602, for the benefit of **HEALTHCARE FINANCIAL SOLUTIONS, LLC**, a Delaware limited liability company, as Administrative Agent for the Lenders under the herein-defined Loan Agreement (in such capacity, together with its successors and assigns, "**Beneficiary**"), whose address for notice hereunder is 500 West Monroe Street, Chicago, Illinois 60661, Attention: Jeffrey M. Muchmore, Loan No. 070004693.

**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Definitions.** As used herein, the following terms shall have the following meanings:

"**Indebtedness**" means all payment obligations of Grantor and the Other Borrower Parties (as defined herein) to Beneficiary or to any Secured Party (as defined in the Loan Agreement) under the Loan Agreement or any of the other Loan Documents, including, without limitation, (a) the Loan, (b) any and all interest accruing under the Loan Agreement or the other Loan Documents, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (c) any Prepayment Premium, Make Whole Breakage Amount or Libor Breakage Amount (as defined in the Loan Agreement) payable under the Loan Agreement.

"**Lenders**" means the Persons defined as "Lenders" under the Loan Agreement.

"**Loan**" means the loan, in the principal amount of up to \$21,420,000.00, made to the Grantor and the Other Borrower Parties by the Lenders, as evidenced by the Loan Agreement and the Note and secured by the other Loan Documents.

"**Loan Agreement**" means that certain Loan Agreement, dated as of even date herewith, between Grantor and the Other Borrower Parties, as borrowers, Beneficiary and the other Lenders named therein, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time.

"**Loan Documents**" means, collectively, the (a) the Loan Agreement, (b) the Note, (c) this Deed of Trust, (d) all documents included within the definition of "Loan Documents" in the Loan Agreement, (e) all other documents now or hereafter executed by Grantor to evidence or secure the payment of all or any portion of the Indebtedness or the performance of all or any

portion of the Obligations or otherwise executed in connection with the Note or this Deed of Trust and (f) all modifications, restatements, extensions, renewals and replacements of the foregoing; provided however, in no event shall the term "Loan Documents" include the Environmental Indemnity Agreement or any Recourse Guaranty Agreement (as such terms are defined in the Loan Agreement).

**"Mortgaged Property"** means all right, title and interest of Grantor in and to (a) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Grantor (the **"Land"**); (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **"Improvements"**); (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the **"Fixtures"**); (d) all goods, accounts, general intangibles, investment property, instruments, letters of credit, letter-of-credit rights, deposit accounts, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as presently or hereafter defined in the UCC, whether now owned or hereafter acquired by Grantor, and whether now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks (excluding any trademark that includes the name "Pacifica" or "Pacifica Senior Living"), goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names (excluding the trade names "Pacifica" and "Pacifica Senior Living"), licenses and/or franchise agreements, rights of Grantor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims, whether arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property or otherwise and all accounts arising from the operation of the Mortgaged Property, and all rights to payment from state or federal programs, boards, bureaus, or agencies and rights to payment from patients, private insurers and others arising from the operation of the Mortgaged Property to the extent assignable or that a security interest therein may be granted as a matter of applicable law and under the terms thereof, including, without limitation, healthcare receivables (exclusive of any of the foregoing owned by tenants of space in the Improvements who are not Affiliates of Grantor) (collectively, the **"Personalty"**); (e) all reserves, escrows or impounds required under the Loan Agreement and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Mortgaged Property; (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the **"Plans"**); (g) all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Mortgaged

Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Grantor of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time (the "**Bankruptcy Code**")) and all related security and other deposits (collectively, the "**Leases**") and all of Grantor's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code; (h) all of the rents, revenues, liquidated damages payable upon default under the Leases, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (the "**Rents**"); (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "**Property Agreements**"); (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof; (k) all insurance policies (regardless of whether required by Beneficiary), unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor; (l) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property; (m) all tradenames, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property; (n) any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty, and (o) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof. As used in this Deed of Trust, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

**"Note"** means, individually and collectively, (a) each Promissory Note, dated as of even date herewith, executed by Grantor and the Other Borrower Parties, payable to the order of a Lender, which collectively evidence the Loan, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time, (b) each other note from time to time made by Grantor and/or the Other Borrower Parties, which evidences all or a portion of the Loan, as amended, restated, modified, supplemented, extended, renewed or replaced from time to time and (c) each other promissory note that recites that it is secured by this Deed of Trust.

**"Obligations"** means all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor or the Other Borrower Parties to Beneficiary or the Secured Parties as set forth in the Loan Documents, including, without limitation, the obligations under any Secured Hedge Agreements.

**"Other Borrower Parties"** means the Affiliates (as defined in the Loan Agreement) of Grantor that are from time to time signatory to the Loan Agreement as "Borrower".

**"Permitted Encumbrances"** means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Deed of Trust, together with the liens and security interests in favor of Beneficiary created by the Loan Documents, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Deed of Trust, materially and adversely affect the value of the Mortgaged Property, impair the use or operations of the Mortgaged Property or impair Grantor's ability to pay its obligations in a timely manner.

**"Secured Obligations"** means the prompt payment of the Indebtedness and prompt performance and observance of all Obligations, whether now existing or hereafter arising or incurred, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

**"State"** means the State of Oregon.

**"UCC"** means the Uniform Commercial Code of the State in effect from time to time or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

**Section 1.2 Other Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement.

## **ARTICLE 2 GRANT**

**Section 2.1 Grant.** To secure the full and timely payment and performance of the Secured Obligations, Grantor hereby irrevocably GRANTS, BARGAINS, SELLS, CONVEYS and ASSIGNS to Trustee, for the benefit of Beneficiary, all of its right, title and interest in and to the Mortgaged Property subject, however, to the Permitted Encumbrances; TO HAVE AND TO HOLD the Mortgaged Property to Trustee, for the benefit of Beneficiary, IN TRUST, WITH POWER OF SALE, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee and Beneficiary and their respective successors, substitutes and assigns.

## **ARTICLE 3 WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Grantor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Deed of Trust creates a valid, enforceable first priority lien and security interest against the Mortgaged Property. Grantor warrants that Grantor has good, marketable and insurable title to the Mortgaged Property, subject to the Permitted Encumbrances, and has the full power, authority and right to execute, deliver and perform its obligations under this Deed of Trust.



**Section 3.2 First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust, subject to only to the Permitted Encumbrances and Liens contested by Grantor in accordance with Section 11.14 of the Loan Agreement.

**Section 3.3 Payment and Performance.** Grantor and the Other Borrower Parties shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Personality.** Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personality to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Beneficiary.

**Section 3.5 Maintenance of Rights of Way, Easements and Licenses.** Grantor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Beneficiary, consent to any public restriction or private restriction as to the use of the Mortgaged Property. Grantor shall comply with all restrictive covenants, covenants, conditions and restrictions and reciprocal easements now or hereafter affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

**Section 3.6 [Reserved]**

**Section 3.7 Other Covenants.** All of the covenants in (a) the Loan Agreement, (b) the Note and (c) any of the other Loan Documents are incorporated herein by reference and are made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein and, together with covenants in this Article 3, shall be covenants running with the land. The covenants set forth in the Loan Agreement include, among other provisions: (i) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Beneficiary with respect to the Loan, (ii) the right of Beneficiary to inspect the Mortgaged Property in accordance with the terms and conditions set forth in the Loan Agreement, (iii) the obligation to keep the Mortgaged Property insured in accordance with the terms and conditions set forth in the Loan Agreement, (iv) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition, and promptly repair any damage or casualty, and (v) except as otherwise permitted under the Loan Agreement, the obligation of Grantor to obtain Beneficiary's consent prior to entering into, modifying or taking other actions with respect to Leases.

**Section 3.8 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Grantor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes

Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement.

(b) **Insurance Proceeds.** Subject to the terms and provisions of the Loan Agreement, Grantor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Grantor authorizes Beneficiary, subject to the terms of the Loan Agreement, to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly.

**Section 3.9 No Transfer or Encumbrance of Mortgaged Property.** Grantor shall not permit or suffer any Transfer to occur, unless specifically permitted by Section 7.1 of the Loan Agreement or unless Beneficiary shall consent thereto in writing. For avoidance of doubt, if the Land or Improvements or any interest therein, or if any portion of the corporate stock, general partnership interests or limited liability company interests in Grantor, shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary (to the extent required under the Loan Agreement), then Beneficiary, in its sole and absolute discretion, may declare all Indebtedness secured hereby to be immediately due and payable.

**Section 3.10 Leases.** Grantor acknowledges and agrees that all Leases shall be subordinate to this Deed of Trust unless Beneficiary shall specify otherwise. Grantor further agrees that, if required by Beneficiary, Grantor shall, at Grantor's expense, cause each Tenant under each of such Leases to enter into a subordination and attornment agreement with Beneficiary (and Grantor, if Beneficiary requires that Grantor be a party to such agreement) which is in form and substance satisfactory to Beneficiary, or cause such Leases to be made superior to this Deed of Trust in a manner satisfactory to Beneficiary. Beneficiary shall be a third party beneficiary of all attornment provisions contained in all Leases executed subsequent to this Deed of Trust. All Tenants who execute Leases or amendments to Leases subsequent to the date of recording of this Deed of Trust shall be bound by the terms of this provision.

## **ARTICLE 4 DEFAULT AND FORECLOSURE**

**Section 4.1 Remedies.** If an Event of Default (as defined in the Loan Agreement) is in continuance, Beneficiary may, at Beneficiary's election, and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Mortgaged Property after an Event of Default and without

Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary or Trustee in connection therewith in accordance with the provisions of Section 4.7.

(d) **Foreclosure and Sale.**

(i) **Generally.** Sell or offer for sale the Mortgaged Property in such portions, order and parcels as Beneficiary may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made in accordance with the laws of the State relating to the sale of real estate or by Chapter 9 of the UCC relating to the sale of collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. At any such sale (i) whether made under the power herein contained, the UCC, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to be physically present, or to have constructive possession of, the Mortgaged Property (Grantor shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Trustee had been actually present and delivered to purchaser at such sale, (ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Grantor, (iii) each recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law, and appointment of any successor Trustee hereunder, (iv) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (v) the receipt of Trustee or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for its or their purchase money and no such purchaser or purchasers, or its or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (vi) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary may be a purchaser at such sale and, if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Indebtedness in lieu of paying cash. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Mortgaged Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Mortgaged Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect



to the Mortgaged Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Mortgaged Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Mortgaged Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Mortgaged Property; (v) anticipated discounts upon resale of the Mortgaged Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Indebtedness; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the previous sentence, Grantor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Grantor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary sole and absolute discretion) higher or lower than any appraised value of the Property.

(ii) **Power of Sale.** Notwithstanding anything in subsection (i) above that could be construed to the contrary, Beneficiary may elect to foreclose by the power of sale in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Mortgaged Property by public declaration at the time and place last appointed for the sale or otherwise in accordance with applicable State law. No other notice of the postponed sale shall be required except as required by applicable State law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, express or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof. Any person, including Grantor, Trustee or Beneficiary may purchase the Mortgaged Property at the sale.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.7.

(f) **UCC.** Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the personal property, and (ii) request Grantor, at its expense, to assemble the personal property and make it available to Beneficiary at a commercially reasonable place acceptable to Beneficiary. Unless otherwise required by applicable law, any notice of sale, disposition or other intended action by Beneficiary with respect to the personal property sent to Grantor in accordance with the

provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor. Grantor further acknowledges and agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with any other personal property of Grantor covered by separate security agreements, is encumbered as one unit, that this Deed of Trust and such security interests, at Beneficiary's option, may be foreclosed or sold in the same proceeding, and that all property encumbered (both realty and personalty), at Beneficiary's option, may be sold as such in one unit as a going business, subject to the provisions of applicable law.

(g) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Deed of Trust).

**Section 4.2 Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Trustee, in Trustee's sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 4.3 Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 4.4 Release of and/or Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 4.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Trustee's election to exercise or Trustee's actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 4.6 Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 4.7 Application of Proceeds.** After the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in accordance with the provisions of the Loan Agreement, unless otherwise required by applicable law.

**Section 4.8 No Waiver.** The exercise or non-exercise by Beneficiary of the rights granted in this Deed of Trust or the collection and application of Rents by Beneficiary or its agent shall not be a waiver of any default by Grantor under this Deed of Trust or any other Loan Document. No action or failure to act by Beneficiary with respect to any obligations of Grantor and the Other Borrower Parties under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Beneficiary's rights and privileges under this Deed of Trust, or discharge, release or modify any of Grantor's duties or obligations hereunder.

**Section 4.9 Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 4.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. To the extent permitted by applicable law, it shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property.

**Section 4.10 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 4.10, or otherwise under this Deed of Trust or any of the other Loan Documents, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 4.11 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity, shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 4.12 Actions and Proceedings.** Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its discretion, decides should be brought to protect its interest in the Mortgaged Property.

## **ARTICLE 5**

### **ASSIGNMENT OF RENTS AND LEASES**

**Section 5.1 Absolute Assignment.** Grantor unconditionally and absolutely assigns to Beneficiary, for the benefit of the Lenders, all of Grantor's right, title and interest in and to: (a) Leases; (b) Rents; (c) Bankruptcy Claims; and (d) any and all other rights of Grantor in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This is an absolute assignment to Beneficiary, for the benefit of the Lenders, and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness, and such absolute assignment is presently and immediately effective. Notwithstanding the foregoing, the absolute assignment contained herein shall not itself reduce the obligations of Grantor owing to Beneficiary or the Lenders under the Loan Documents unless and until Beneficiary actually receives (for the benefit of the Lenders) the Rents and such Rents are applied by Beneficiary (for the account of the Lenders) to such obligations pursuant to Section 5.6 below.

**Section 5.2 Rights of Beneficiary.** Subject to the provisions of Section 5.4 below, while an Event of Default is in existence, Beneficiary shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and



obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary's request, Grantor shall deliver a copy of this Deed of Trust to each tenant under a Lease and to each manager and managing agent or operator of the Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Deed of Trust and, subject to the terms of the Loan Agreement, to turn over to Beneficiary, on demand, all Rents which it receives.

**Section 5.3 No Obligation or Liability.** Notwithstanding Beneficiary's rights hereunder, neither Beneficiary nor Lenders shall be obligated to perform, and neither Beneficiary nor the Lenders undertakes to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Deed of Trust. Neither Beneficiary nor Lenders shall have any responsibility on account of this Deed of Trust for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Neither Beneficiary nor Lenders shall be liable for any loss sustained by Grantor resulting from Beneficiary's or Lenders' failure to let the Property after an Event of Default or from any other act or omission of Beneficiary or Lenders in managing the Property after an Event of Default. Nothing herein contained shall be construed as constituting Beneficiary or any Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Beneficiary. In the exercise of the powers herein granted to Beneficiary, no liability shall be asserted or enforced against Beneficiary or Lenders, all such liability being expressly waived and released by Grantor.

**Section 5.4 Revocable License.** Notwithstanding that this assignment in this Article 5 is an absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the Rents and Leases, subject to the terms of this Section 5.4, Beneficiary grants to Grantor a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license shall be automatically revoked upon the occurrence of any Event of Default and Beneficiary shall immediately be entitled to receive and apply all Rents, whether or not Beneficiary enters upon and takes control of the Property; provided, however, that Beneficiary may at any time, and from time to time, reinstate the revocable license, and Beneficiary shall reinstate the revocable license upon such time as no Event of Default remains in existence. Prior to such revocation, Grantor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Beneficiary is hereby granted and assigned by Grantor the right, at its option, upon the revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Indebtedness in such priority and proportion as Beneficiary, in its discretion, shall deem proper.

**Section 5.5 No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the



Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

**Section 5.6 Indemnification.** Grantor shall indemnify, defend and hold harmless Beneficiary and the Lenders from and against all liability, loss, damage, cost or expense which it may incur under this Deed of Trust or under any of the Leases, including any claim against Beneficiary or the Lenders by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including attorneys' fees and expenses, but excluding any claim to the extent caused by Beneficiary's or Lenders' gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Grantor to Beneficiary at a rate equal to the Default Rate.

**Section 5.7 Bankruptcy.**

(a) Upon or at any time after the occurrence of an Event of Default, Beneficiary shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Grantor a petition under the Bankruptcy Code, and Grantor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Beneficiary not less than ten (10) days' prior notice of the date on which Grantor shall apply to the bankruptcy court for authority to reject the Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantor, within such ten-day period, a notice stating that (i) Beneficiary demands that Grantor assume and assign the Lease to Beneficiary, for the benefit of the Lenders, pursuant to Section 365 of the Bankruptcy Code and (ii) Beneficiary covenants to cure or provide adequate assurance of future performance under the Lease. If Beneficiary serves upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence.

**ARTICLE 6  
SECURITY AGREEMENT**

**Section 6.1 Security Interest.** This Deed of Trust constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Grantor grants to Trustee and Beneficiary, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the

UCC with respect to such property. Unless otherwise required by applicable law, any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor.

**Section 6.2 Further Assurances.** Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such further documents and assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such documents and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor's state of organization is the State and its chief executive office is located in the State at the address set forth in the first paragraph of this Deed of Trust. Grantor authorizes Beneficiary to file financing statements without the signature of Grantor thereon.

**Section 6.3 No Obligation of Trustee or Beneficiary.** The security interest herein granted shall in no event cause Trustee or Beneficiary to be deemed or construed as a mortgagee in possession of the Mortgaged Property, to obligate Trustee or Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 6.4 Fixture Filing.** This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

**Section 6.5 Continuing Effect Notwithstanding Termination of Deed of Trust.** It is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Beneficiary, this Deed of Trust shall remain fully effective as a security agreement and fixture filing, notwithstanding that the lien on real property that is created by this Deed of Trust may be extinguished or released, by foreclosure of this Deed of Trust or otherwise.

## ARTICLE 7 CONCERNING THE TRUSTEE

**Section 7.1 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties hereunder. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties. Grantor's

obligations under this Section 7.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

**Section 7.2    Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by it hereunder.

**Section 7.3    Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

**Section 7.4    Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

## ARTICLE 8 MISCELLANEOUS

**Section 8.1    Limitation on Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Grantor, the Other Borrower Parties and Beneficiary with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Beneficiary or charged by Beneficiary for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Indebtedness; and (b) if maturity is accelerated, by reason of an election by Beneficiary or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, at Beneficiary's option, shall be credited on the principal of the Indebtedness or returned to Grantor. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of

Illinois, except that if at any time the laws of the United States of America permit Beneficiary to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of Illinois (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Beneficiary may contract for, take, reserve, charge or receive under the Loan Documents.

**Section 8.2    Notices.** Any notice required or permitted to be given under this Deed of Trust shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

**Section 8.3    Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 8.4    Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder; however: (i) Beneficiary shall not, under any circumstances, be obligated to perform any obligation of Grantor; (ii) any sums advanced by Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary; and (iv) Beneficiary shall not be liable to Grantor, the Other Borrower Parties or any other person or entity for any failure to take any action which it is empowered to take under this Section.

**Section 8.5    Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 8.6 No Waiver.** Any failure by Trustee or Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Trustee or Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 8.7 Subrogation.** To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

**Section 8.8 Loan Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Loan Agreement, the Loan Agreement shall govern.

**Section 8.9 Release or Reconveyance.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Beneficiary, at Grantor's expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Mortgaged Property to Grantor, as applicable. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

**Section 8.10 Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary.

**Section 8.11 Limitation on Liability.** Grantor's liability hereunder is subject to the limitation on the personal liability of Grantor contained in the provisions of Article 12 of the Loan Agreement.

**Section 8.12 Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Deed of Trust as "Grantor," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 8.13 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of Illinois except that the provisions of the laws of the jurisdiction in which the Land is located shall be applicable to the creation, perfection and enforcement of the lien created by this Deed of Trust. The invalidity, illegality or unenforceability of any provision of this Deed of Trust shall not affect or impair the validity, legality or enforceability of the remainder of this Deed of Trust, and, to this end, the provisions of this Deed of Trust are declared to be severable.

**Section 8.14 VENUE.** GRANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO



BENEFICIARY'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS, PROVIDED THAT ANY ACTION RELATED TO THE CREATION, PERFECTION, OR ENFORCEMENT OF THE LIEN CREATED BY THIS DEED OF TRUST SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY IN WHICH THE LAND IS LOCATED. GRANTOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. GRANTOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON GRANTOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO GRANTOR, AT THE ADDRESS SET FORTH IN THIS DEED OF TRUST AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

**Section 8.15 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 8.16 Entire Agreement.** This Deed of Trust and the other Loan Documents and the Environmental Indemnity Agreement embody the entire agreement and understanding between Beneficiary and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents and the Environmental Indemnity Agreement 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.

**Section 8.17 Counterparts.** This Deed of Trust may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

**Section 8.18 No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 8.19 Inapplicable Provisions.** If any term, covenant or condition of this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, this Deed of Trust shall be construed without such provision.

**Section 8.20 Exhibits; Recitals.** The information set forth on the cover and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Deed of Trust with the same effect as if set forth in the body hereof.

**Section 8.21 Variable Rate Interest.** Grantor and, by its acceptance hereof, Beneficiary, acknowledge and agree that the rate of interest charged on the principal amount of

the Loan may vary from time to time as more particularly set forth in the Note, the Loan Agreement and the other Loan Documents.

**Section 8.22 Suretyship Waivers.**

(a) Grantor agrees that its obligations hereunder are absolute and unconditional, irrespective of, and unaffected by:

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Deed of Trust, any other Loan Document or any other agreement, document or instrument to which Grantor is or may become a party;

(ii) the absence of any action to enforce this Deed of Trust or any other Loan Document or the waiver or consent by Beneficiary with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect its Lien against, any security for the Indebtedness or any action, or the absence of any action, by Beneficiary in respect thereof (including the release of any such security);

(iv) the insolvency of Grantor or any Other Borrower Party;

(v) the election of remedies by Beneficiary; or

(vi) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor;

it being agreed by Grantor that its obligations under this Section 8.22 shall not be discharged until the payment and performance, in full, of the Indebtedness has occurred.

(b) Grantor hereby expressly and irrevocably subordinates to payment of the Indebtedness any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Indebtedness is indefeasibly paid in full in cash. Grantor acknowledges and agrees that this subordination is intended to benefit Beneficiary and shall not limit or otherwise affect Grantor's liability hereunder or the enforceability of this Section 8.22, and that Beneficiary and its successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 8.22.

(c) Grantor expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel Beneficiary to marshal assets or to proceed in respect of the Indebtedness against any Other Borrower Party, any other party or against any security for the payment of the Indebtedness and performance of the other Obligations before proceeding against, or as a condition to proceeding against, Grantor. It is agreed among Grantor and Beneficiary that the foregoing waivers are of the essence of the transaction contemplated by this Deed of Trust and that, but for the provisions of this Section 8.22 and such waivers, Lenders would decline to make the Loan to Borrower.

**Section 8.23 Multisite Real Estate Transaction.** Grantor acknowledges that this Deed of Trust is one of a number of mortgages, deeds of trust and other security documents (“**Other Deeds of Trust**”) that secure the Indebtedness and the other Obligations. Grantor agrees that the lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Beneficiary of any security for or guarantees of the Indebtedness or the other Obligations, or by any failure, neglect or omission on the part of Beneficiary to realize upon or protect Indebtedness and any other Obligation or any collateral security therefor including the Other Deeds of Trust. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of the Indebtedness or any of the other Obligations or of any of the collateral security therefor, including the Other Deeds of Trust or of any guarantee thereof, and, to the fullest extent permitted by applicable law, Beneficiary may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Deeds of Trust without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Beneficiary’s rights and remedies under any or all of the Other Deeds of Trust shall not in any manner impair the indebtedness hereby secured or the lien of this Deed of Trust and any exercise of the rights or remedies of Beneficiary hereunder shall not impair the lien of any of the Other Deeds of Trust or any of Deed of Trust’s rights and remedies thereunder. To the fullest extent permitted by applicable law, Grantor specifically consents and agrees the Beneficiary may exercise its rights and remedies hereunder and under the Other Deeds of Trust separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

## **ARTICLE 9 SPECIAL STATE PROVISIONS**

**Section 9.1 State Specific Provisions.** In the event of any material inconsistencies between this Article 9 and any of the other terms and provisions of this Deed of Trust, the terms and provisions of this Article 9 shall control and be binding.

**Section 9.2 Financing Statement.** This Deed of Trust constitutes a financing statement filed as a fixture filing under ORS 79.0334 and 79.0502, as amended or recodified from time to time, with respect to any part of the Property that is or may become a fixture and for the purposes of such financing statement: (a) the “Debtor” shall be Grantor and the “Secured Party” shall be the Beneficiary and its successors and assigns; (b) the addresses of Grantor as Debtor and of the Beneficiary as Secured Party are as specified above in the first paragraph of this Deed of Trust; (c) the name of the record owner is Grantor; and (d) the types or items of collateral consist of any part of the Mortgaged Property that is or may become a fixture.

**Section 9.3 ORS 79.0502.** This Deed of Trust is intended, inter alia, to be (1) a deed of trust, in which the name and address of the Grantor, Trustee and Beneficiary appear in the cover sheet and the caption on page 1, and (2) a financing statement filed as a fixture filing under ORS 79.0502(3), in which the name and address of the Debtor and the Secured Party or a representative of the Secured Party are as specified in the initial paragraph hereof. The organizational identification number of each Debtor is specified in the initial paragraph hereof.

The goods, accounts, and/or collateral covered by this financing statement are the Personalty and Fixtures. The collateral covered by the financing statement covers goods that are or are to become fixtures. This financing statement is to be filed for record in the real property records. A description of the real property to which the collateral is related is in Exhibit A. The Beneficiary is the Secured Party. The Trustee is not the Secured Party.

#### **Section 9.4 Statutory Disclosures.**

(a) ORS 93.040(1). BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

(b) ORS 41.580. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE, MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US TO BE ENFORCEABLE.

#### **Section 9.5 Notice Under ORS 746.201.**

#### **WARNING**

(a) Unless Grantor provides Beneficiary with evidence of insurance coverage as required by this Deed of Trust or the Loan Agreement, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. If the Mortgaged Property is damaged, the coverage purchased by Beneficiary may not pay any claim made by Grantor or any claim made against Grantor. Grantor may later cancel the coverage obtained by Beneficiary by providing evidence that it has provided the insurance coverage required by this Deed of Trust.

(b) Grantor is responsible for the cost of any insurance obtained by Beneficiary. The cost of that insurance may be added to the Indebtedness. If the cost is added, the Default Rate

will apply to the 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.

(c) The coverage purchased by Beneficiary may be considerably more expensive than insurance Grantor may be able to obtain on its own and may not satisfy the need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**Section 9.6 Not for Personal Use.** This Deed of Trust is a commercial trust deed and not a residential trust deed, as the phrase "residential trust deed" is defined in ORS 86.705, or any successor to such provision, and the provisions of ORS 86.705 through ORS 86.795 applicable to the foreclosure of commercial trust deeds shall apply to this Deed of Trust at the option of Beneficiary.

**Section 9.7 Type of Loan.** The payment of the Indebtedness and the Obligations secured by this Deed of Trust are not a loan of money that is primarily for personal, family, or household use within the meaning of ORS 82.150.

**[Signatures Begin on the Following Page]**



IN WITNESS WHEREOF, Grantor has executed this Deed of Trust or has caused the same to be executed by its duly authorized representative as of the date appearing in the acknowledgments below to be effective as of the date first above written

PACIFICA SL KLAMATH FALLS LLC, an Oregon  
limited liability company

By: *Deepak Israni*  
Deepak Israni, General Manager

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 San Diego )

On June 28, 2016 before me, Dusti M. Boyd, Notary Public (insert name and title of the officer), personally appeared DEEPAK ISRANI 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 *Dusti M. Boyd* (Seal)



## EXHIBIT A

### Legal Description

#### PARCEL 1:

A PARCEL OF LAND SITUATED IN PORTIONS OF VACATED BLOCKS 2, 3, 6, 7, 9 AND 10, ELDORADO ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, IN THE COUNTY OF KLAMATH, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING THE MOST NORTHERLY CORNER OF LOT 2, BLOCK 10, ELDORADO ADDITION TO THE CITY OF KLAMATH FALLS, OREGON; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, SOUTH 38 DEGREES 16'30" WEST 100.00 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 2; THENCE ALONG THE SOUTHWESTERLY LINE OF THE VACATED PORTION OF BLOCKS 9 AND 10 OF SAID ELDORADO ADDITION, NORTH 51 DEGREES 42'50" WEST 170.69 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE NORTH 38 DEGREES 16'30" EAST 667.37 FEET TO THE SOUTHERLY LINE OF ELDORADO BOULEVARD; THENCE ALONG SAID SOUTHERLY LINE OF ELDORADO BOULEVARD 182.39 FEET ALONG THE ARC OF A 667.34 FOOT RADIUS CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS SOUTH 55 DEGREES 00'55" EAST 181.84 FEET; THENCE 29.87 FEET ALONG THE ARC OF A 20.00 FOOT CURVE TO THE RIGHT, THE LONG CHORD OF WHICH BEARS SOUTH 4 DEGREES 30'47" EAST, TO ITS POINT OF TANGENCY WITH THE WESTERLY LINE OF SLOAN STREET; THENCE ALONG SAID WESTERLY LINE OF SLOAN STREET SOUTH 38 DEGREES 16'30" WEST 557.91 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 2; THENCE ALONG SAID NORTHEASTERLY LINE NORTH 51 DEGREES 42'50" WEST 29.31 FEET TO THE POINT OF BEGINNING.

#### PARCEL 2:

LOT 2 IN BLOCK 10, ELDORADO ADDITION TO THE CITY OF KLAMATH FALLS, IN THE COUNTY OF KLAMATH, STATE OF OREGON, EXCEPTING THEREFROM THE SOUTHEASTERLY 19 FEET, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON. TOGETHER WITH ALL RIGHTS CONTAINED IN THE CROSS EASEMENT AGREEMENT RECORDED WITH THE COUNTY CLERK OF KLAMATH FALLS, OREGON AS VOLUME M96, PAGE 922, MICROFILM RECORDS OF KLAMATH COUNTY, OREGON.

Account Nos. R170442, R170451