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Klamath County, Oregon

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Tax Map No. R-3809-032AD-04400-000

**DEED OF TRUST**

**NOTICE: THIS DOCUMENT SECURES A VARIABLE INTEREST RATE NOTE AND  
CONTAINS PROVISIONS FOR INCREASES UNDER CERTAIN CIRCUMSTANCES IN THE  
PRINCIPAL BALANCE OF THE INDEBTEDNESS SECURED HEREBY**

**THIS IS A PURCHASE MONEY 1ST DEED OF TRUST.**

THIS DEED OF TRUST is made as of the July 31, 2017, by and between SWEET WOLVERINE HOLDINGS LLC, having a place of business of 632 Oak Avenue, Klamath Falls, OR 97601 ("**Grantor**"), and David Starfield, with an address of 1300 Virginia Drive, Suite 1300, Fort Washington Pennsylvania ("**Trustee**").

**RECITALS**

United Community Bank, having a place of business at 2 West Washington Street, Suite 700, Greenville, SC 29601 ("**Lender**"), has agreed, pursuant to a Loan Agreement of even date herewith (the "**Loan Agreement**"), and subject to the terms set forth therein, to make a loan to Grantor and SWEET WOLVERINE MANAGEMENT L.L.C. (collectively, "**Borrower**") in an aggregate amount of **One Million One Hundred Forty Thousand Dollars and No Cents (\$1,140,000.00)** (the "**Loan**"), the Loan Agreement constituting the consideration for this Deed of Trust.

Borrower has duly executed its promissory note of even date herewith (the "**Note**") to evidence the terms of repayment of the Loan with interest at the rate or rates established from time to time in accordance with the terms set forth therein, which Note has been delivered by Borrower to the Lender (the Lender and any assignee or other lawful owner of the Note being hereinafter sometimes called "**Holder**").

The entire unpaid balance of principal and interest, if not sooner paid, shall be due and payable Twenty-One (21) years from the date hereof (the "**Maturity Date**").

This Deed of Trust shall secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of Lender, or otherwise, as are made prior

to the Maturity Date, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust, but such secured indebtedness shall not exceed at any time the maximum principal amount of the Loan, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance, together with interest on such disbursements. Any such future advances, whether obligatory or to be made at the option of the Lender, or otherwise, may be made either prior to or after the due date of the Note or any other debts, obligations and liabilities secured by this Deed of Trust. This Deed of Trust is given for the specific purpose of securing any and all indebtedness of Borrower to Lender (but in no event shall the secured indebtedness exceed at any time the maximum principal amount set forth in this paragraph) in whatever manner this indebtedness may be evidenced or represented, until this Deed of Trust is satisfied of record. All covenants and agreements contained in this Deed of Trust shall be applicable to all further advances made by Lender to Borrower under this future advance clause.

All things necessary to make the Note the valid, binding and legal obligation of Borrower, and to make this Deed of Trust a valid, binding and legal instrument for the security of the Note in accordance with its terms, have been duly performed, and the execution and delivery of the Note Borrower and this Deed of Trust by Grantor have been in all respects duly authorized.

It has been agreed that the repayment of the Loan with interest, according to the terms of the Note and any alterations, modifications, substitutions, extensions or renewals thereof, as well as the performance of the other covenants, terms and conditions herein, should be secured by the execution of this Deed of Trust, which also shall secure payment by Grantor of all costs and expenses incurred in respect to the Loan, including reasonable attorney's fees as is hereinafter provided.

NOW, THEREFORE, WITNESSETH: in consideration of the premises and of other good and valuable considerations, the receipt of which is hereby acknowledged, Grantor grants, assigns, conveys and transfers unto the Trustee, their and each of their successor or successors in the trust and assigns, in fee simple, all that land situate in **the City of Klamath Falls, County of Klamath, State of Oregon, commonly known as 632 Oak Avenue, Tax Map No. R-3809-032AD-04400-000 and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land")** and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repair, replacements and improvements now or hereafter located thereon (hereinafter sometimes called the **"Improvements"**).

TOGETHER with all the walks, fences, shrubbery, driveways, fixtures, equipment, machinery, apparatus, fittings, building materials and other articles of personal property of every kind and nature whatsoever, now or hereafter ordered for eventual delivery to the Land (whether or not delivered thereto), and all such as are now or hereafter located in or upon any interest or estate in the Land or any part thereof and used or usable in connection with any present or future operation of the Land now owned or hereafter acquired by Grantor, including, without limiting the generality of the foregoing, all heating, lighting, laundry, clothes washing, clothes drying, incinerating and power equipment, engines, pipes, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire-prevention, fire-extinguishing, refrigerating, ventilating, and communications apparatus, television sets, radio systems, recording systems, computer equipment, air-cooling and air-conditioning apparatus, elevators, escalators, shades, awnings, draperies, curtains, fans, furniture, furnishings, carpeting, linoleum and other floor coverings, screens, storm doors and windows, stoves, gas and electric ranges, refrigerators, garbage disposals, sump pumps, dishwashers, washers, dryers, attached cabinets, partitions, ducts and compressors, landscaping, swimming pools, lawn and garden equipment, security systems and including all equipment installed or to be installed or used or usable in the operation of the building or buildings or appurtenant facilities erected or to be erected in or upon the Land; it being understood that all of the aforesaid shall be deemed to be fixtures and part of the Land, but whether or not of the nature of fixtures they shall be deemed and shall constitute part of the security for the Obligations herein mentioned and shall be covered by this Deed of Trust. Disposition of any of the aforesaid or of any interest therein is prohibited; however, if any disposition is made in violation hereof, the Trustee shall have a security interest in the proceeds therefrom to the fullest extent permitted by the laws of the State of Oregon; and

TOGETHER with all and singular the rights, alleys, ways, waters, easements, tenements, privileges, advantages, accessions, hereditaments and appurtenances belonging or in any way appertaining

to the Land and other property described herein, and the reversions and remainders, earnings, revenues, rents, issues and profits thereof and including any right, title, interest or estate hereafter acquired by Grantor in the Land and other property described herein; and

TOGETHER with all the right, title and interest (but not the obligations) of Grantor, present and future, in and to all present and future accounts, contract rights (including all fees and other obligations set forth in the Lender's commitment to make the Loan), general intangibles, chattel paper, documents and instruments including but not limited to licenses, construction contracts, service contracts, utility contracts, options, permits, public works agreements, bonds, deposits and payments thereunder, relating or appertaining to the Land and other property described herein and its development, occupancy and use; and

TOGETHER with any right to payment for services rendered, whether or not yet earned by performance, arising from the operation of the improvements or any other facility on the Land, including, without limitation, (1) all accounts arising from the operation of the improvements and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof, and (2) all rights to payment from any consumer credit/charge card organization or entity, including, without limitation, payments arising from the use of the American Express Card, Visa Card, Carte Blanche Card, MasterCard, Diner's Club, or any other credit card, including those now existing or hereinafter created or any substitution therefor and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof; and

TOGETHER with all of the rents, royalties, revenues, income, proceeds, profits and other benefits paid or payable by parties to the leases for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying the Land, the improvements, and other property securing the Obligations, or any portion thereof. As used in this Deed of Trust, the word "leases" includes any and all leases, subleases, licenses, concessions, reservations, accounts, permits, contracts, and other agreements (oral or written, now or hereafter in effect) which grant a possessory interest or right of occupancy in and to, or the right to use, or affect all or part of the Land, the improvements, and other property securing the Obligations, or any portion thereof; and

TOGETHER with all proceeds of and any unearned premiums on any insurance policies covering the Property (hereinafter defined), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property or any part thereof; and

TOGETHER with all proceeds derived from any taking by condemnation or eminent domain proceedings or transfer in place or in anticipation thereof of all or any part of the property described in these granting clauses;

TO HAVE AND TO HOLD the Land with improvements thereupon and all the rights, easements, profits and appurtenances and other property described above (all of which is hereinafter sometimes called the "**Property**") belonging unto and to the use of the Trustee, and their and each of their successor or successors in the trust and assigns, in fee simple forever;

BUT IN TRUST, NEVERTHELESS, for and upon the uses, intents and purposes hereinafter mentioned, that is to say for the benefit and security of Holder and for the enforcement of the payment of the Loan, the Note and all other loans, advances, debts, liabilities, obligations, covenants and duties owing by the Borrower and/or Grantor to the Lender (and its successors and/or assigns) of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower or Grantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, express or implied, under any documents evidencing or executed in connection with any of the foregoing; and any amendments, extensions, substitutions, renewals, replacements and/or increases of or to any of the

foregoing, and all costs and expenses of the Lender incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses (hereinafter referred to collectively as the "**Obligations**"). Unless expressly provided to the contrary in documentation for any other loan or loans, it is the express intent of the Lender, the Borrower and the Grantor that all Obligations, including those included in, arising out of or related to the Loan, be cross-collateralized and cross-defaulted, such that collateral securing any of the Obligations shall secure repayment of all Obligations and a default under any Obligation shall be a default under all Obligations;

SUBJECT, HOWEVER, to the superior liens and rights of the holders of the contracts and instruments secured by any instruments that may be described in Exhibit B to this Deed of Trust (the "**Permitted Encumbrances**");

PROVIDED, HOWEVER, that if Grantor shall pay or cause to be paid to Holder all sums secured hereby in the manner stipulated in the Note, the Loan Agreement and this Deed of Trust, then and in such case, the estate, right, title and interest of the Trustee in the Property shall cease, determine and become void, and upon proof being given to the satisfaction of the Trustee that the Note has been paid or satisfied, in accordance with its terms and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by the Trustee and of any other sums as in this Deed of Trust provided, the Trustee shall, upon receipt of the written request of Holder, and at the expense of Grantor, release and discharge this Deed of Trust of record, and shall transfer and deliver up to Grantor any property at the time subject to this Deed of Trust which may be then in their possession, provided the Trustee hereunder shall be entitled to a fee of Twenty Dollars (\$20.00) each for the release and reconveyance of the Property or any partial release and reconveyance;

AND THIS DEED OF TRUST FURTHER WITNESSETH, that Grantor (jointly and severally if more than one) has covenanted and agreed and does hereby covenant and agree with the Trustee and with Holder as follows:

#### **ARTICLE I. DEFINITIONS**

1.1 **Definitions.** All capitalized terms used herein and not otherwise defined shall have the respective meanings set forth or referred to in the Loan Agreement.

#### **ARTICLE II. COVENANTS AND AGREEMENTS OF GRANTOR**

2.1 **Incorporation of Covenants, Conditions and Agreements.** All the covenants, conditions and agreements contained in the Loan Agreement, the Note and the other Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

2.2 **Title to the Property.** Grantor covenants that at the time of the execution and delivery of this Deed of Trust it has good title to all of the property described in the granting clauses of this Deed of Trust as being presently granted, assigned, conveyed and transferred hereunder, free and clear of all liens and encumbrances except for the Permitted Encumbrances; Grantor hereby does and will forever warrant generally and defend the title to the Property, and every part thereof, whether now owned or hereafter acquired, unto the Trustee and their or each of their successor or successors in the trust and assigns, against all claims and demands by any person or entity whatsoever; Grantor covenants that Grantor shall comply with all the terms, covenants and conditions of all agreements and instruments, recorded and unrecorded, affecting the Property; Grantor covenants that it has good right and lawful authority to mortgage, give, grant, pledge, assign and convey the Property in the manner and form herein provided.

2.3 **Further Assurances.** At any and all times Grantor shall furnish and record all and every such further assurances as may be requisite or as the Trustee shall reasonably require for the better assuring and confirming unto the Trustee the estate and property hereby granted, assigned, conveyed or transferred,

or intended so to be whether now owned or hereafter acquired; Grantor shall bear all expenses, charges and taxes in connection therewith.

**2.4 Escrow for Taxes.** To better secure the covenant to pay taxes and fees in the Loan Agreement, Grantor agrees that, if Holder so requests, Grantor shall deposit with Holder on the day of each month on which a payment of interest is due under the Note, beginning with the month following such request, one-twelfth of the annual taxes next due as estimated by Holder, plus one-twelfth of the annual fire, hazard and other insurance premiums as required herein, such deposit to be held by Holder, without interest, to pay said taxes and premiums. If payments of interest are due under the Note other than monthly, appropriate adjustment shall be made in the amount of the aforesaid periodic deposits.

Any amounts deposited pursuant to the provisions of this Section shall not be, nor be deemed to be, trust funds, nor shall they operate to curtail or reduce the Obligations secured hereby, and all such amounts may be commingled with the general funds of the depositor and be deposited with Holder or at an institution designated by Holder. Holder shall not be responsible for the solvency of such institution, provided it is insured by the Federal Deposit Insurance Corporation or other regulatory agency at the time of designation. If at any time Holder shall determine that the amount then on deposit shall be insufficient to pay an obligation in full, Grantor shall immediately after demand deposit with Holder the amount of the deficiency determined by Holder. Nothing contained in this Section shall be deemed to affect any right or remedy of Holder under any provisions of this Deed of Trust or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the rate provided for in the Note, to the Obligations secured hereby.

**2.5 Change in Tax Law.** In the event of the passage after date of this Deed of Trust of any law changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust, or the manner of collection of any such taxation so as to affect this Deed of Trust, Holder may give thirty (30) days' written notice to Grantor requiring the payment of the Obligations secured hereby. If such notice be given, the Obligations secured hereby shall become due and payable at the expiration of said thirty (30) days; *provided, however*, that such requirement of payment shall be ineffective if Grantor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to Holder, and if Grantor in fact pays such tax prior to the date upon which payment is required by such notice.

**2.6 Activities on the Property.** Grantor shall not suffer any act to be done or any conditions to exist on the Property or any part thereof or any thing or article to be brought thereon (i) which may cause structural injury to the improvements on the Land; or (ii) which would cause the value or usefulness of the Property or any part thereof to diminish (ordinary wear and tear excepted); or (iii) which may be dangerous, unless safeguarded as required by law; or (iv) which may in fact or in law, constitute a nuisance, public or private; or (v) which may void or make voidable any insurance then in force or required by the terms of this Deed of Trust, the Loan Agreement to be in force.

**2.7 Additional Insurance.** In addition to the provisions of and to the extent not so provided by the Loan Agreement, Grantor shall at all times maintain during the entire term of this Deed of Trust the following insurance, in form and substance satisfactory to Holder.

(a) **Commercial General Liability.** Grantor shall at all times keep itself insured against liability for damages arising from any accident or casualty in or upon the Property by maintaining commercial general liability insurance in an amount acceptable to Holder and under forms and by companies approved by Holder.

(b) **Business Interruption Insurance.** Grantor shall at all times maintain in full force and effect business interruption insurance in an amount acceptable to Holder and under forms and by companies approved by Holder.

(c) **Workers' Compensation.** During any construction, repair, restoration or replacement of improvements on the Land, Grantor shall cause all contractors and subcontractors (including Grantor if it

acts as a contractor) to obtain and keep in effect workers' compensation insurance to the full extent required by applicable law and also which shall cover all employees of each contractor and subcontractor; upon demand, Grantor shall provide evidence satisfactory to Holder that it is complying with this covenant. All insurance for loss or damage shall provide that losses, if any, shall be payable to Holder, as its interest may appear. Grantor will pay the premiums for all insurance and deliver to Holder the policies of insurance or duplicates thereof, or other evidence satisfactory to Holder of such insurance coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it, or by independent instrument furnished to Holder, that (i) it will give Holder thirty (30) days' prior written notice of the effective date of any material alteration or cancellation of such policy; and (ii) the coverage of Holder shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations or conditions of such insurance policy or policies. The proceeds of such insurance shall be applied, at Holder's option, toward the replacement, restoration or repair of the Property which may be lost, stolen or destroyed or damaged or toward payment of any Obligations of Grantor to Holder.

**2.8 Additional Advances.** If Grantor shall fail to perform any of the covenants or satisfy any of the conditions contained herein, Holder may make advances or payments towards performance or satisfaction of the same but shall be under no obligation so to do; and all sums so advanced or paid shall be at once repayable by Grantor and shall bear interest at the Default Rate from the date the same shall become due and payable until the date paid, and all sums so advanced or paid, with interest as aforesaid, shall become a part of the Obligations secured hereby; but no such advance or payment shall relieve Grantor from any default hereunder. If Grantor shall fail to perform any of the covenants or satisfy any of the conditions contained herein, Holder may use any funds of Grantor towards performance or satisfaction of the same but shall be under no obligation so to do; and no such use of funds shall relieve Grantor from any default hereunder.

**2.9 Condemnation Awards.** Should the grade of any street be altered or all or any part of the Property be condemned or taken through eminent domain proceedings, all or such part of any award or proceeds derived therefrom, as Holder in its sole discretion may determine in writing, shall be paid to Holder and applied to the payment of the Obligations secured hereby (in such manner or combination thereof, including inverse order of maturity of installments of principal, if any, as Holder may, in its sole discretion, elect) and all such proceeds are hereby assigned to Holder.

**2.10 Costs of Defending and Enforcing the Lien.** Grantor shall pay all costs, charges and expenses, including appraisals, title examinations, and reasonable attorney's fees, which Holder or the Trustee may incur in defending or enforcing the validity or priority of the legal operation and effect of this Deed of Trust, or any term, covenant or condition hereof, or in collecting any sum secured hereby, or in protecting the security of Holder including without limitation being a party in any condemnation, bankruptcy or administrative proceedings, or, if an Event of Default shall occur, in administering and executing the trust hereby created and performing their powers, privileges and duties hereunder. Holder or the Trustee may make advances or payments for such purposes but all advances or payments made by Holder or the Trustee for such purposes shall be repayable immediately by Grantor and shall bear interest at the Default Rate from the date the same shall become due and payable until the date paid, and any such sum or sums with interest as aforesaid shall become a part of the Obligations secured hereby; but no such advance or payment shall relieve Grantor from any default hereunder.

**2.11 Modification of Terms; No Novation.** Holder may at any time, and from time to time, extend the time for payment of the Obligations secured hereby, or any part thereof, or interest thereon, and waive, modify or amend any of the terms, covenants or conditions in the Note, in this Deed of Trust or in any other Loan Document, in whole or in part, either at the request of Grantor or of any person having an interest in the Property, accept one or more notes in replacement or substitution of the Note, consent to the release of all or any part of the Property from the legal operation and effect of this Deed of Trust (and the Trustee may so release), take or release other security, release any party primarily or secondarily liable on the Note or hereunder or on such other security, grant extensions, renewals or indulgences therein or herein, apply to the payment of the principal and interest and premium, if any, of the Obligations secured hereby any part or all of the proceeds obtained by sale or otherwise as provided herein, without resort or regard to other security, or resort to any one or more of the securities or remedies which Holder may have and which

in its absolute discretion it may pursue for the payment of all or any part of the Obligations secured hereby, in such order and in such manner as it may determine, all without in any way releasing Grantor or any party secondarily liable from any of the terms, covenants or conditions of the Note, this Deed of Trust, or any other Loan Document, or relieving the unreleased Property from the legal operation and effect of this Deed of Trust for all amounts owing under the Note, the Loan Agreement and this Deed of Trust. Holder and Grantor recognize and agree that the provisions of this Deed of Trust, the Note, and any other Loan Document may be modified by them or their successors or assigns at any time before or after default (which modification may involve increasing the rate of interest in the Note, agreeing that other charges should be paid, or modifying any other provision in any such instruments). The Trustee acting pursuant to the written direction of Holder may extend the time of payment, may agree to alter the terms of payment of the Obligations, and may grant partial releases of any portion of the property included herein. No such modification by Holder and Grantor nor any such action by Holder or the Trustee referred to above shall be a substitution or novation of the original Obligations or instruments evidencing or securing the same, but shall be considered a possible occurrence within the original contemplation of the parties.

**2.12 Governmental Action Affecting the Property.** Grantor agrees that in the event of the enactment of any law or ordinance, the promulgation of any zoning or other governmental regulation, or the rendition of any judicial decree restricting or affecting the use of the Property or rezoning the area wherein the same shall be situate which Holder reasonably believes adversely affects the Property, Holder may, upon at least sixty (60) days' written notice to Grantor, require payment of the Obligations secured hereby at such time as may be stipulated in such notice, and the whole of the Obligations secured hereby, shall thereupon become due and payable.

### **ARTICLE III. EVENTS OF DEFAULT**

The occurrence of one or more of the following events (herein called an "Event of Default") shall constitute and be an Event of Default:

**3.1 Default under Loan Documents.** The occurrence and continuance of an Event of Default under the Loan Agreement, the Note, or any other Loan Document shall constitute an Event of Default hereunder. In the event Holder consents to an encumbrance on the Property, a default under the terms of any document creating such an encumbrance shall be a default hereunder.

**3.2 Additional Insurance Obligations.** Grantor fails to promptly perform or comply with any of the terms and conditions set forth in subsection 2.7 and such failure continues for ten (10) days after notice from Holder to Grantor.

**3.3 Material Obligations.** Grantor fails to perform or observe any of its material obligations under this Deed of Trust and such failure shall continue for a period of thirty (30) days after Holder gives Grantor written notice thereof.

**3.4 Judgment.** Unless adequately covered by insurance in the reasonable opinion of Holder, the entry of a final judgment for the payment of money involving more than \$10,000.00 against Grantor or any guarantor of the Loan and the failure of Grantor or any guarantor of the Loan to cause the same to be discharged or bonded off to the satisfaction of Holder within sixty (60) days from the date the order, decree or process under which or pursuant to which such judgment was entered.

### **ARTICLE IV. REMEDIES**

**4.1 Power of Sale; Assent to Decree.** If one or more of the Events of Default shall occur, the Trustee are authorized and shall have the power and the duty at the direction of Holder to proceed by suit or suits at law or in equity or by any other appropriate remedy to protect and enforce the rights of Holder whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or to enforce payment of the Note, or to foreclose this Deed of Trust, or to sell the Property under the judgment or decree of a court or courts of competent jurisdiction, or otherwise. Grantor, in accordance with any general or local laws or rules or regulations of the State of

Oregon relating to mortgages and deeds of trust including any amendments thereof or supplements thereto which do not materially change or impair the remedy, does hereby declare and assent to the passage of a decree to sell the Property by the equity court having jurisdiction for the sale of the Property and the Trustee appointed by such decree of court shall have, subject to the terms of the decree of court, the same authority and power to sell on the terms and conditions herein set forth, and for such purposes the word "Trustee" shall be deemed to include the Trustee so appointed. This assent to decree shall not be exhausted in the event the proceeding is dismissed before the indebtedness or Obligations secured hereby are paid in full.

4.2 **Acceleration.** If one or more of the Events of Default shall occur, Holder may, at its option, declare the entire unpaid principal amount of the Note (if not already due and payable) to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in the Note, in the Loan Agreement or in this Deed of Trust to the contrary notwithstanding; and in the event of any sale of all or any part of the Property, whether made under the power of sale herein granted, assent to a decree or through judicial proceedings, such unpaid principal amount shall automatically and without notice become so due and payable. If Holder exercises Holder's option to declare the entire unpaid principal amount of the Note to be due and payable, Grantor covenants to pay immediately the full amount of the Obligations secured hereby even though foreclosure or other court proceedings to collect the Obligations have not been commenced. Acceleration of maturity, once declared by Holder, may at the option of Holder, be rescinded by written acknowledgment to that effect by Holder, but the tender and acceptance of partial payments alone shall not rescind or affect in any way such acceleration of maturity.

4.3 **Possession of the Property.** If one or more of the Events of Default shall occur, Grantor shall, upon demand, forthwith surrender the actual possession, and, to the extent permitted by law, Holder, by such officers or agents as it may appoint, may enter and take possession of the Property and may exclude Grantor, its agents and servants, wholly therefrom, and having and holding the same, may use, operate, manage and control the Property or any part thereof, and upon every such entry Holder, at the expense of Grantor and of the Property, from time to time may make all necessary or proper repairs, renewals, replacements and useful or required alterations, additions, betterments and improvements to and upon the Property as to it may seem judicious and pay all costs and expenses of so taking, holding and managing the same, including reasonable compensation to its employees and other agents (including, without limitation, attorney's fees and management and rental commissions) and any taxes, assessments and other charges prior to the legal operation and effect of this Deed of Trust which Holder may deem it wise or desirable to pay, and in such case Holder shall have the right to manage the Property and to carry on the business and exercise all rights and powers of Grantor, either in the name of Grantor, or otherwise, as Holder shall deem advisable; and Holder shall be entitled to collect and receive all rents thereof and therefrom. The taking of possession and collection of rents by Holder shall not be construed to be an affirmation of any lease or acceptance of attornment with respect to any lease of all or any portion of the Property. After deducting the expenses of operating the Property and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, improvements and all payments which it may be required or may elect to make for taxes or other proper charges on the Property, or any part thereof, as well as just and reasonable compensation for all its employees and other agents (including, without limitation, attorney's fees and management and rental commissions) engaged and employed, the moneys arising as aforesaid shall be applied to the Obligations secured hereby. Whenever all that is due upon the principal of and interest on the Note and under any of the terms of this Deed of Trust shall have been paid and all defaults made good, Holder shall surrender possession to Grantor. The same right of entry, however, shall exist if any subsequent Event of Default shall occur.

4.4 **Appointment of a Receiver.** Until one or more of the Events of Default shall occur (but not thereafter), Grantor shall have possession of the Property and shall have the right to use and enjoy the same and to receive the rents thereof and therefrom. If one or more of the Events of Default shall occur, and without the requirement of any other showing, Holder shall be entitled as a matter of right and to the extent permitted by law, without notice to Grantor, and without regard to the adequacy of the security, to the immediate appointment of a receiver of the Property and of the rents thereof and therefrom, in an ex



parte proceeding with all such other powers as the court or courts making such appointment shall confer, and the rents thereof and therefrom are hereby assigned to Holder as additional security under this Deed of Trust. Grantor shall deliver to the receiver appointed pursuant to the provisions of this Section, or to Holder in the event of entry pursuant to the terms of the preceding Section, all original records, books, bank accounts, leases, agreements, security deposits of the tenants and all other materials relating to the operation of the Property.

#### **4.5 Possession and Disposition of Personal Property.**

(a) If one or more of the Events of Default shall occur, Holder may at its discretion require Grantor to assemble such items of the Property as may be designated by Holder and make them available to the Trustee at a place reasonably convenient to both parties to be designated by Holder or the Trustee. Upon a default under this Deed of Trust, Holder shall have the right to take possession of such items of the Property as Holder may elect. In taking possession Holder may proceed without judicial process if this can be done without breach of the peace. Holder shall have the further right to remove such items of the Property as it may choose to any location or locations selected by Holder, and Grantor shall pay the costs of such removal and for the storage and protection of such items immediately upon demand therefor.

(b) If Holder elects to direct the Trustee to proceed under the Oregon Uniform Commercial Code to dispose of some of the Property, the Trustee shall give Grantor notice by certified mail, postage prepaid, return receipt requested, of the time and place of any public sale of any of such property or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to Grantor at least five (5) days before the time of the sale or other disposition, which provisions for notice Grantor and the Trustee agree are reasonable; provided, however, that nothing herein shall preclude Holder and the Trustee from proceeding as to all the Property in accordance with the rights and remedies of Holder and the Trustee in respect of the real property, as provided in the Oregon Uniform Commercial Code, as amended from time to time.

#### **4.6 Foreclosure Sale.**

(a) If one or more of the Events of Default shall occur, the Trustee, at the direction of Holder, shall sell and in the case of default of any purchaser or purchasers shall resell all the Property as an entirety, or in such parcels and in such order as Holder shall in writing request, or, in the absence of such request, as the Trustee may determine (Grantor hereby waiving for itself and for any person claiming by or through it application of the doctrine of marshalling of assets), at public auction at some convenient place or places in the jurisdiction in the where the Property is situate, or in such other place or places as may be permitted by law, at such time, in such manner and upon such terms as the Trustee may fix and briefly specify in each notice of sale, which notice of sale shall state the time when, and the place where, the same is to be made, shall contain a brief general description of the property to be sold, and shall be sufficiently given if published as frequently and in such publication as may be required by law, and Holder or the Trustee may cause such further public advertisement to be made as they may deem advisable, and any such sale may be adjourned by the Trustee by announcement at the time and place appointed for such sale or for such adjourned sale, and, without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. If one or more leases are entered into or recorded subsequent to the recording of this Deed of Trust or are otherwise subordinate to this Deed of Trust, the Trustee shall sell, at the direction of Holder, subject to any one or more of such tenancies that are designated and selected by Holder.

(b) Upon the completion of any sale and compliance with all the terms thereof, the Trustee shall execute and deliver to the purchaser or purchasers a good and sufficient deed of conveyance, assignment and transfer, lawfully conveying, assigning and transferring the property sold. Payment to the Trustee of the entire purchase money shall be full and sufficient discharge of any purchaser or purchasers of the property, sold as aforesaid, for the purchase money; and no such purchaser, or his representatives,

successors or assigns, after paying such purchase money and receiving the deed shall be bound to see to the application of such purchase money.

(c) In the case of any sale of the Property or of any part thereof, whether under the power of sale herein granted, assent to decree or through other judicial proceedings, the purchase money, proceeds and avails thereof, together with any other sums which may then be held as security hereunder or be due under any of the provisions hereof as a part of the Property, shall be applied as follows:

FIRST, to pay all proper costs, charges, fees and expenses, including the fees and costs herein provided for and to pay the costs of appraisals of the Property and the costs of title examination; and to pay or repay to Holder or the Trustee all moneys advanced by them or either of them for taxes, insurance or otherwise, with interest thereon as provided herein; and to pay all taxes due upon the Property at the time of sale; and to pay any other lien or encumbrance prior to the legal operation and effect of this Deed of Trust unless said sale is made subject to any such taxes or other lien or encumbrance; and to pay a counsel fee of One thousand five hundred Dollars (\$1,500.00) for conducting the proceedings if without contest, but if legal services are rendered to Trustee or to Holder in connection with any contested matter in the proceedings, then such additional counsel fees and expenses shall be allowed out of the proceeds of sale or sales as the court may deem proper; and to pay additional reasonable counsel fees, if any, incurred as a result of representing Holder's interest in any proceedings on behalf of any Grantor before any United States Bankruptcy Court or similar State insolvency proceedings; and also to pay a commission to the Trustee or other party making the sale equal to five percent (5%) of the gross sale price; and also to pay a commission to the auctioneer conducting the sale of three percent (3%) of the gross sale price;

SECOND, to pay whatever may then remain unpaid under the Note and the interest thereon to the date of payment, whether the same shall be due or not, it being agreed that the Note shall, upon such sale being made before the maturity of the Note, be and become immediately due and payable at the election of Holder and to pay all of the Obligations secured hereby;

THIRD, to pay the remainder of said proceeds, if any, less the expense, if any, of obtaining possession, to Grantor or other party lawfully entitled to receive the same, upon the delivery and surrender of possession of the Property sold and conveyed and delivery of all records, books, bank accounts, leases, agreements, security deposits of the tenants and all other material relating to the operation of the Property to the said purchaser or purchasers.

(d) Immediately upon the filing or docketing of suit preliminary to a foreclosure sale of the Property, or any part thereof under this Deed of Trust, there shall be and become due and owing by Grantor, a Trustee' commission on the total amount of the indebtedness secured hereby equal to two and one-half percent (2- 1/2%), and an auctioneer's commission on the total amount of the indebtedness of one percent (1%), and Holder shall not be required to receive the principal and interest in satisfaction of the Obligations secured hereby, but said sale may be proceeded with unless, prior to the day appointed therefor, tender is made of said principal, interest, commissions and all expenses and costs incident to such sale and all other sums that are part of the Obligations secured hereby.

(e) Holder may bid and become the purchaser at any sale under this Deed of Trust. If Holder is the purchaser at any such sale, Holder may apply the outstanding indebtedness against all or any portion of the purchase price, including the deposit.

## **ARTICLE V. MISCELLANEOUS**

### **5.1 Trustee.**

(a) *Actions of Trustee.* The Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by them to be genuine and to have been signed by the party or parties purporting to sign the same. The Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistake of law or fact, nor for anything which they may do or refrain from doing in good faith nor generally shall a Trustee have any accountability hereunder except for his own individual willful default.

(b) *Trustee as Attorneys.* The Trustee may act hereunder and may sell and convey the Property as herein provided although the Trustee have been, may now be or may hereafter be, attorneys or agents of any Holder, in respect of any matter or business whatsoever.

(c) *Substitution of Trustee.* Holder shall be entitled to remove, substitute, or add a Trustee or Trustee, at its option, with or without cause or notice, by instrument duly executed, acknowledged and recorded among the Land Records of the city or county in the where this Deed of Trust is recorded, and thereupon such additional or successor Trustee or Trustee, without any further act, deed or conveyance, shall become vested with all the estates, property, title, rights, powers, privileges, discretions, trusts, duties and obligations of his or their co-Trustee, or predecessor or predecessors in the trust hereunder with like effect as if originally named as Trustee or Trustee hereunder; exercise of said power, no matter how often, shall not be an exhaustion thereof.

(d) *Incapacity or Absence From State.* It is further understood and agreed that in the event of the disability of one of the Trustee, or of such Trustee's absence from the , the rights, powers, privileges, discretions, duties, obligations, and trust hereby created and reposed in the Trustee may be executed by the other Trustee or Trustee with the same legal force, effect and virtue as though executed by both or all of them.

**5.2 Estoppel Certificates.** Grantor, upon request, made either personally or by mail, shall, within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail, certify, by a writing duly acknowledged, to Holder or to any proposed assignee of the Note, the amount of principal and interest then owing on the Note and whether any offsets or defenses exist against the Obligations secured hereby. At the request of Holder, such certificate shall also contain a statement that Grantor knows of no Event of Default nor of any other default which, after notice or lapse of time or both, would constitute an Event of Default, which has occurred and remains uncured as of the date of such certificate, or, if any such Event of Default or other default has occurred and remains uncured as of the date of such certificate, then such certificate shall contain a statement specifying the nature thereof, the time for which the same has continued and the action which Grantor has taken or proposes to take with respect thereto.

**5.3 Subrogation.** This Deed of Trust and the Trustee, as additional security, are hereby subrogated to the lien or liens and to the rights of the owners and holders thereof of each and every mortgage, lien or other encumbrance on the Property, or any part thereof, or any claim or demand which is paid or satisfied, in whole or in part, out of the proceeds of the Obligations secured hereby and the respective liens of said mortgages, liens and other encumbrances and claims and demands shall pass to and be held by the Trustee as additional security for the Obligations to Holder to the same extent that they would have been preserved and would have been passed to and been held by Holder had they each been duly and regularly assigned, transferred, set over and delivered to Holder by separate deed of assignment, notwithstanding the fact the same may be or may have been satisfied and cancelled of record, it being the intention of the parties hereto that the same will be satisfied and cancelled of record at or about the time they are paid or satisfied out of the proceeds of the Loan.

**5.4 Notices.** Unless specifically provided otherwise in this Deed of Trust or by law, any notice required or permitted by or in connection with this Deed of Trust shall be in writing and shall be made by facsimile or by hand delivery, by overnight delivery service, or by certified mail, unrestricted delivery, return receipt requested, postage prepaid, addressed to Holder or Grantor at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by Holder or Grantor. Notice shall be considered given as of the date of the facsimile or the hand delivery, one (1)

calendar day after delivery to the overnight delivery service, or three (3) calendar days after the date of mailing, independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish that notice was given as provided herein.

**5.5 Legal Construction.** This Deed of Trust shall be construed according to the laws of the State of Oregon (excluding conflict of laws) and any court of competent jurisdiction of the State of Oregon shall have jurisdiction in any proceeding instituted to enforce this Deed of Trust and any objections to venue are hereby waived.

**5.6 Usury Limitations.** No provision of this Deed of Trust shall require the payment or permit the collection of interest or other sum in excess of the maximum permitted by applicable law, including a judicial determination. If any excess of interest or other sum in such respect is herein provided for, or shall be adjudicated to be so provided for herein, neither Grantor nor its successors or assigns shall be obligated to pay such interest or other sum in excess of the amount permitted by applicable law, including a judicial determination, and the right to demand the payment of any such excess shall be and hereby is waived. The provisions of this Section shall control all other provisions of this Deed of Trust.

**5.7 Recording.** Grantor covenants and agrees to promptly cause all documents required by Holder to be properly recorded or filed, including this Deed of Trust, and to pay all fees, taxes and expenses incident thereto. Grantor shall hold harmless and indemnify Holder against any liability incurred by reason of the imposition of any fee, tax or charge on the making and recording of this Deed of Trust.

**5.8 Rights of Holder and Trustee.**

(a) *Rights Not Limited.* The rights, powers, privileges and discretions (hereinafter collectively called the "rights") specifically granted to the Trustee and those specifically granted to Holder under this Deed of Trust are not in limitation of but in addition to those to which they are entitled under any general or local law relating to deeds of trust and mortgages in the , now or hereafter existing.

(b) *Benefit to Successors and Assigns.* The rights to which Holder may be entitled shall inure to the benefit of its successors and assigns.

(c) *Rights Cumulative.* All the rights of Holder and of the Trustee are cumulative and not alternative and may be enforced successively or concurrently.

**5.9 No Waiver.** Failure of Holder or of the Trustee to exercise any of their rights shall not impair any of their rights nor be deemed a waiver thereof, and no waiver of any of their rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the party waiving the right. The acceptance by Holder of any partial payment after default or an Event of Default, with or without knowledge of the default or Event of Default, shall not be a waiver of the default or Event of Default unless Holder shall specifically state in writing that the acceptance waives the default or Event of Default or states further conditions which must be satisfied to constitute such a waiver. The failure of Holder to exercise the option for acceleration of maturity, foreclosure, or either, following an Event of Default or to exercise any other option or privilege granted to Holder hereunder in any one or more instances, shall not constitute a waiver of any such default, but such option or privilege shall remain continuously in force.

**5.10 Mutual Waiver of Jury Trial.** Grantor and Holder (by acceptance of this Deed of Trust) each, on behalf of itself and its successors and assigns, WAIVES to the fullest extent permitted by law all right to TRIAL BY JURY of any and all claims between them arising under this Deed of Trust, the Note, the Loan Agreement, or any other Loan Documents, and any and all claims arising under common law or under any statute of any state or the United States of America, whether any such claims be now existing or hereafter arising, now known or unknown. In making this waiver Holder and Grantor acknowledge and agree that any and all claims made by Holder and all claims made against Holder shall be heard by a judge of a court of proper jurisdiction, and shall not be heard by a jury. Holder and Grantor acknowledge and agree that THIS WAIVER OF TRIAL BY JURY IS A MATERIAL ELEMENT OF THE

CONSIDERATION FOR THIS TRANSACTION. Holder and Grantor, with advice of counsel, each acknowledges that it is knowingly and voluntarily waiving a legal right by agreeing to this waiver provision.

**5.11 Waiver by Grantor.** Grantor waives, on behalf of itself and all persons now or hereafter interested in the Property, all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, redemption and marshalling statutes, laws or equities now or hereafter existing and agrees that no defense based on any thereof will be asserted in any action enforcing this Deed of Trust. Furthermore, Grantor hereby expressly waives the right or equity of redemption, whether arising under statute, common law, or both. Grantor represents and covenants that the Property forms no part of any property owned, used or claimed by Grantor as a business or residential homestead or as exempt from forced sale and disclaims and renounces all and every such claim thereto.

**5.12 Secondary Market Cooperation.** Grantor acknowledges that Holder may (a) sell this Deed of Trust, the Note and the other Loan Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Deed of Trust, the Note, and the other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Grantor shall cooperate in good faith with Holder in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any rating agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the rating agency and addressing such matters as the rating agency may require; provided, however, Grantor shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note, or (iv) any other material economic term of the Loan. Grantor shall provide such information and documents relating to Grantor, any guarantor of Grantor, the Property and any tenant of the Property as Holder may reasonably request in connection with a Secondary Market Transaction. Holder shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Grantor, any guarantor of Grantor, the Property and any tenant of the Property. Grantor acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents.

**5.13 Indemnification.** Neither the Trustee nor Holder shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Grantor under any lease. Grantor shall indemnify the Trustee and Holder for and save them harmless from any and all liability arising from any lease or assignment of a lease as security under this Deed of Trust. Neither the Trustee nor Holder shall have any responsibility for the control, care, management or repair of the Property or be liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee or any other person or entity. The obligations and liabilities of Grantor under this paragraph shall survive any termination, satisfaction or assignment of this Deed of Trust and the exercise by Holder of any of its rights or remedies hereunder including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

**5.14 Binding Effect.** The terms and conditions agreed to by Grantor and the covenants of Grantor shall be binding upon the personal representatives, successors and assigns of Grantor and of each of them, but this provision does not waive any prohibition of assignment or any requirement of consent to an assignment under the other provisions of this Deed of Trust; any consent to an assignment shall not be consent to any further assignment, each of which must be specifically obtained in writing.

**5.15 Recitals.** The recitals of this Deed of Trust are incorporated herein and made a part hereof.

5.16 **Number and Gender.** Wherever used herein the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

5.17 **Time of Essence.** Time is of the essence of the obligations of Grantor in this Deed of Trust and each and every term, covenant and condition made herein by or applicable to Grantor.

5.18 **Captions.** The captions of the Sections of this Deed of Trust are for the purpose of convenience only and are not intended to be a part of this Deed of Trust and shall not be deemed to modify, explain, enlarge, or restrict any of the provisions hereof.

5.19 **Severability.** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid, inoperative or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be valid, operative and enforceable to the greatest extent permitted by law.

5.20 **Execution of Counterparts.** This Deed of Trust may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same Deed of Trust.

5.21 **Security Agreement.** Grantor has executed this instrument as a Debtor under the Uniform Commercial Code of the state in which the Property is located. This Deed of Trust shall constitute and be a security agreement and financing statement under the laws of such state.

5.22 **Due On Sale.** Without the prior written consent of Lender, Grantor will abstain from and will not cause or permit any sale, exchange, transfer, lease or conveyance (herein all called "transfer") of all or any part of the Property, or any interest in it, voluntarily or by operation of law. If all or any part of the Property or an interest therein is sold or transferred without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

5.23 **U.S. SMALL BUSINESS ADMINISTRATION PROVISION:**

**The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:**

a) **When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.**

b) **Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.**

**Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.**

**ARTICLE VI. ADDITIONAL COVENANTS**

**6.1 Leases of the Property**

6.1.1 *Compliance with Leases.* Grantor shall carry out all of its agreements and covenants as landlord contained in any leases (which word when used in this Deed of Trust shall include, without limitation, all agreements, licenses, contracts, reservations, accounts, and permits affecting all or any part of the Property) and not permit a lien or other encumbrance superior to such leases other than this Deed of Trust. No lease shall include any space, or grant to any tenant any right or interest in any area

outside of the limits of the Property. Upon demand of Holder, Grantor shall furnish Holder an executed copy of each lease immediately upon its execution. All future leases shall be written on the standard form accepted by Holder, with only such changes as Holder shall have approved in writing or on a lease agreement approved by Holder.

6.1.2 *Assignment of Leases.* Grantor hereby grants, conveys, assigns, and transfers unto the Trustee, for the benefit of Holder, all the right, title, interest and privileges which Grantor has or may hereafter have in any and all of said leases now existing or hereafter made affecting all or a part of the Property, as said leases may have been or may from time to time be hereafter modified, extended or renewed with all the rents (which word when used in this Deed of Trust shall include, without limitation, all income and profits) due and becoming due therefrom and including without limitation the right of Holder to inspect the leased areas and books and records of tenants. Grantor shall, upon written request by Holder or the Trustee, execute assignments (in any form customarily used by Holder) of any present or future leases, together with the rents due and becoming due therefrom, which affect in any way all or any part of the Property. No such assignment made or required hereby shall be construed as a consent by Trustee or Holder to any lease or to impose on Trustee or Holder any obligation with respect thereto. Grantor shall not make any other assignment, hypothecation or pledge of any rents under any lease of part or all of the Property. Grantor shall not, without the prior written approval of Holder, cancel any of the leases, nor terminate or accept a surrender thereof, nor reduce the payment of rent thereunder, nor modify any of said leases, nor accept any prepayment of rent other than the usual prepayment as would result from the acceptance by landlord more than fifteen (15) days before the first day of each month for the ensuing month under leases approved by Holder according to the terms of such leases. The covenants and restrictions of this subsection shall be deemed covenants and restrictions running with the land.

6.1.3 *Limitation on Subordinate Lienors.* Grantor covenants that Holder of any subordinate lien shall have no right, and shall acquire no right, to terminate or modify any lease affecting the Property whether or not such lease is subordinate to the legal operation and effect of this Deed of Trust.

6.1.4 *Deposit of Rents.* All payments, including security deposits, under any lease received by Grantor shall be deemed held by Grantor in trust for the payment of the Obligations secured hereby. Grantor shall deposit in a non-interest bearing account or accounts with Holder all payments (except security deposits made under residential leases, if any) made under all leases, which sums, subject to the rights of the tenants therein, may be used by Grantor in the ordinary course of Grantor's business to the extent permitted by law, until one or more of the Events of Default shall occur, but not thereafter.

6.1.5 *Assignment of Bankruptcy Awards.* Grantor hereby assigns to the Trustee for the benefit of Holder any award made hereafter to it in any court procedure involving any of the tenants in any bankruptcy, insolvency or reorganization proceeding in any state or federal court and any and all payments by any tenant in lieu of rent.

6.1.6 *Limitation of Liability under Leases.* Neither the Trustee nor Holder shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Grantor under any lease; and Grantor hereby agrees to indemnify the Trustee and Holder for and to save them harmless from, any and all liability arising from any lease, or this assignment thereof and this assignment shall not place the responsibility for the control, care, management or repair of the Property upon the Trustee or Holder, nor make said Trustee or Holder liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, agent, guest, or stranger.

6.1.7 *Security Deposits.* Grantor shall deposit in an account or accounts with Holder or its designee, under the depository's standard program for such accounts, all security deposits made under residential leases which sums, subject to the rights of the tenants therein, may be used by Grantor in the ordinary course of Grantor's business to the extent permitted by law, until one or more of the Events of Default shall occur, but not thereafter. All such deposits shall be the continuing responsibility of Grantor, and Grantor shall comply with all applicable requirements of applicable law where the Property is located.

## **6.2 Environmental Covenants**

6.2.1 *No Substances Present.* Grantor hereby represents and warrants to Holder that there are not now and have never been any materials or substances located on or near the Property that, under federal, state, or local law, statute, ordinance, or regulation, or administrative or court order or decree, or private agreement (collectively, the "Environmental Laws"), are regulated as to use, generation, collection, storage, treatment, or disposal (such materials or substances are hereinafter collectively referred to as "Substances"). The term "Substances" includes any materials or substances whose release or threatened release may pose a risk to human health or the environment or impairment of property values and shall also include without limitation (i) asbestos in any form, (ii) urea formaldehyde foam insulation, (iii) paint containing lead, (iv) transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls of 50 parts per million or more, and (v) petroleum in any form. Grantor further represents and warrants to Holder that the Property is not now being used nor has it ever been used in the past for any activities involving the use, generation, collection, storage, treatment, or disposal of any Substances. Grantor will not place or permit to be placed any Substances on or near the Property except for those Substances that are typically used in the operation of Grantor's business provided the same are in appropriately small quantities and are stored, used, and disposed of properly; or Substances that are approved in writing by Holder.

6.2.2 *Acting Upon Presence of Substances.* Grantor hereby covenants and agrees that, if at any time (i) Substances are spilled, emitted, disposed, or leaked in any amount; or (ii) it is determined that there are Substances located on, in, or under the Property other than those of which Holder has approved in writing or which are permitted to be used on the Property without Holder's written approval pursuant to subsection 6.2.1 of this Section, Grantor shall immediately notify Holder and any authorities required by law to be notified, and shall, within thirty (30) days thereafter or sooner if required by Holder or any governmental authority, take or cause to be taken, at Grantor's sole expense, such action as may be required by Holder or any governmental authority. If Grantor shall fail to take such action, Holder may make advances or payments towards performance or satisfaction of the same but shall be under no obligation so to do; and all sums so advanced or paid, including all sums advanced or paid in connection with any investigation or judicial or administrative proceeding relating thereto, including, without limitation, reasonable attorneys' fees, expert fees, fines, or other penalty payments, shall be at once repayable by Grantor and shall bear interest at the Default Rate, from the date advanced or paid by Holder until the date paid by Grantor to Holder, and all sums so advanced or paid, with interest as aforesaid, shall become a part of the Obligations secured hereby.

6.2.3 *Environmental Audits.* Grantor, promptly upon the written request of Holder from time to time, shall provide Holder, at Grantor's expense, from time to time with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form, and content satisfactory to Holder.

6.2.4 *Environmental Notices.* Grantor shall furnish to Holder duplicate copies of all correspondence, notices, or reports it receives from any federal, state, or local agency or any other person regarding environmental matters or Substances at or near the Property, immediately upon Grantor's receipt thereof.

6.2.5 *Condition of Property.* Grantor hereby represents and warrants that there are no wells or septic tanks on the Property serving any other property; no wells or septic tanks on other property serving the Property; no burial grounds, archeological sites, or habitats of endangered or threatened species on the Property; and that no part of the Property is subject to tidal waters; has been designated as wetlands by any federal, state, or local law or governmental agency; or is located in a special flood hazard area.

6.2.6 *Environmental Indemnity.*

6.2.6.1 Grantor shall at all times indemnify and hold harmless Holder and the Trustee against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Holder or the Trustee, whether as beneficiary of this Deed of Trust, as mortgagee in possession, or as successor-in-interest to



Grantor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Environmental Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

- (a) any discharge of Substances, the threat of a discharge of any Substances, or the presence of any Substances affecting the Property whether or not the same originates or emanates from the Property or any contiguous real estate including any loss of value of the Property as a result of any of the foregoing;
- (b) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Environmental Laws;
- (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Property; and/or
- (d) any other environmental matter affecting the Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local environmental agency.

Grantor's obligations under this Agreement shall arise upon the discovery of the presence of any Substance, whether or not the Environmental Protection Agency, any other federal agency or any state or local environmental agency has taken or threatened any action in connection with the presence of any Substances.

[Signature and Acknowledgement Page to Follow]

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be duly executed on its behalf and its seal to be hereunto affixed as of the date first above written.

SWEET WOLVERINE HOLDINGS LLC

By: \_\_\_\_\_

*Veronica Hanley*  
Veronica Hanley, Member

State/ Commonwealth of \_\_\_\_\_

*Oregon*

County of \_\_\_\_\_

*Klamath*

On this, the 31 day of July, 2017, before me, the undersigned officer, personally appeared **Veronica Hanley** who acknowledged herself to be the Member of SWEET WOLVERINE HOLDINGS LLC an Arizona Limited Liability Company, and that she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Company by herself as Member.

In witness whereof, I hereunto set my hand and official seal.



*Stacy Marie Howard*  
Notary Public

**EXHIBIT A**

**PROPERTY DESCRIPTION**  
632 Oak Avenue, Klamath Falls, Oregon

Parcel 1:

Lots 1 and 2 in Block 94, Klamath Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

Parcel 2:

Lot 3 in Block 94 of Klamath Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

**NONE**