

AFTER RECORDING  
RETURN TO:

Klamath County  
305 Main Street,  
Klamath Falls, Oregon 97601

Attention: Donna Boyer

**STATUTORY NOTICE:**

The name and address of the entity holding a lien or other interest created by this instrument is set forth below and the tax account number(s) of the property subject to the lien or in which the interest is created is:

Tax Account No(s). N/A

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made this 1st day of December, 2017, among NORTH STATE GROCERY, INC., a California corporation, as Grantor, whose address is 20803 Front Street, Cottonwood, CA 96022; AMERITITLE, INC., whose address is 300 Klamath Avenue, Klamath Falls, OR 97601; and KLAMATH COUNTY, whose address is 305 Main Street, Klamath Falls, Oregon 97601.

FOR VALUE RECEIVED, Grantor conveys to Trustee in trust, with the power of sale, the real property in Klamath County, Oregon, described in Exhibit A attached hereto and by reference incorporated herein, that has an address of: 211 N. 8<sup>th</sup> Street, Klamath Falls, Oregon 97601.

TOGETHER WITH, a security interest in and a lien upon all improvements and all property rights associated with the real property, including, but not limited to, the following:

A. **Land.** Grantor's fee simple interest in the above-described land, whether now existing or hereafter acquired.

B. **Buildings, Improvements and Building Equipment.** All right, title and interest of Grantor in and to the buildings, structures and improvements now or at any time hereafter erected, constructed and situated upon the real property or any part thereof and all apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, escalators, fittings, piping, connections, conduits, ducts, equipment and other like fixtures of every kind and description now or hereafter affixed or attached to any such buildings, structures or improvements and as shall be now or hereafter used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilation, air conditioning, refrigerating, cleaning or general operation of the property, together with any and all alterations or replacements thereof and additions thereto, whether made by Grantor or any successor in interest (all of the foregoing being hereinafter sometimes collectively called the "Improvements").

C. **Rents and Other Rights and Interests of Grantor in or Pertinent to the Property.** All right, title and interest of Grantor now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, privileges, easements, land sale contracts, options, franchises, leases and appurtenances belonging or in any way appertaining to the real property and the reversions, remainders, rents, revenues, income, royalties, issues, profits and proceeds thereof, including all interest of Grantor as landlord in and to all present and future leases, tenancies and occupancies of space in the Improvements and in each and every sublease of the entire or any part of the Improvements, and all the estate, rights, title and interest, claims and demands whatsoever in law or in equity, which Grantor now has or may hereafter acquire in and to the real property.

D. **Oil, Gas and Mineral Rights.** All damages, royalties and revenues of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas, or mineral rights and reservations of the real property.

E. **Condemnation and Insurance Claims.** All proceeds and claims arising on account of any damage to or taking of the property or the Improvements or any part thereof, and all causes of action and recoveries from any loss or diminution in the value of the land or Improvements, and all insurance policies relating to the real property and Improvements and all claims or demands related thereto.

F. **Licenses.** All licenses, water rights zoning rights and privileges, franchise agreements, permits, authorities or certificates required or used in connection with the ownership of or the operation or maintenance of, the real property and Improvements.

The real property, Improvements and other rights described above are hereinafter referred to as the **"Property."**

GRANTOR GRANTS BENEFICIARY a security interest in the Property, including all interest of Grantor in any of such items hereafter at any time acquired under conditional sales contracts, purchase money security agreements, chattel mortgages or other title retaining or security instruments. This grant shall constitute a grant of a security interest under the trust deed statutes of the state of Oregon and the Uniform Commercial Code of the state of Oregon.

GRANTOR IS INDEBTED to Beneficiary in the amount of One Million Seven Hundred Ten Thousand and No/100 Dollars (\$1,710,000.00) according to the terms of a Deed of Trust Note given to evidence such indebtedness, dated December 1, 2017, under which the final payment of principal will be due on December 1, 2020 (**"Maturity Date"**). The Deed of Trust Note and any note or notes given in renewal, modification, substitution, or in addition to the trust deed originally issued are collectively referred to herein as the **"Note."** The Note may be paid in full at any time prior to the Maturity Date. All payments on the Note are to be in U.S. funds.

The term **"Indebtedness"** as used in this Deed of Trust shall mean (1) the principal payable under the Note, (2) any future amounts that Beneficiary may in its discretion loan to

Grantor, with interest thereon, and (3) any amounts expended or advanced by Beneficiary to discharge obligations of Grantor or expenses incurred by Beneficiary or Trustee to enforce obligations of Grantor, as permitted under this Deed of Trust, with interest thereon as provided below.

This Deed of Trust and security interest are given to secure payment of the Indebtedness and performance of all obligations of Grantor under this Deed of Trust and are given and accepted on the following terms and conditions which Grantor shall promptly and faithfully observe and perform:

1. PAYMENT AND PERFORMANCE

Grantor shall pay to Beneficiary promptly when due all amounts due under the Note, this Deed of Trust, and any other document evidencing or securing the loan from Beneficiary to Grantor, payment of which is secured by this Deed of Trust, and shall strictly perform all obligations imposed upon Grantor by this Deed of Trust.

2. WARRANTIES OF TITLE

Grantor represents and warrants that (a) Grantor is lawfully possessed and is the lawful owner of the Property; (b) the Property is free and clear of any deed of trust, mortgage, lien, charge, encumbrance, easement or other matter affecting title thereto, other than those permitted by Beneficiary as set forth in Exhibit B, attached hereto (the "**Permitted Exceptions**"); (c) except as set forth in Exhibit B, Grantor has not previously assigned rents, revenues, royalties or any other rights from the Property; (d) Grantor will maintain and preserve the lien of this Deed of Trust until the Indebtedness secured hereby has been paid in full; (e) Grantor has good right and lawful authority to mortgage and pledge the Property as provided in and by this Deed of Trust; and (f) Grantor will forever warrant and defend the same against any and all claims and demands whatsoever, except as specifically set forth in this Deed of Trust.

3. TAXES AND INSURANCE

Until the Note is fully paid and all other obligations hereunder are fulfilled, Grantor shall pay all property taxes, special assessments and insurance premiums affecting the Property (collectively, the "**Charges**") as and when due, and Grantor shall promptly (but, in no event, later than the date due) furnish to Beneficiary original receipts evidencing such payments or other evidence of payment satisfactory to Beneficiary. With respect to property taxes payment when due, for purposes of this section shall mean payment in full by November 15 of each year or, if Grantor elects to pay real property taxes in installments, then the timely payment of all installments as permitted by law.

4. CONTESTS

Grantor may, in good faith, contest, by proper legal proceedings, and at its own expense, with legal counsel acceptable to Beneficiary, the validity or amount of any Charges, provided that if Grantor has not paid such Charges, Grantor shall either post a bond with

Beneficiary in form and substance satisfactory to Beneficiary (in its sole discretion) or deposit with Beneficiary a sum which shall be at least ten percent (10%) greater than the amount contested, and, also, from time to time, on demand of Beneficiary, such additional sums as may be reasonably required to cover interest, penalties and attorney fees accrued or which may accrue on such item or items, and Beneficiary may upon reasonable notice to Grantor pay such contested item or items out of any sum so deposited in case of undue delay in the prosecution of such proceedings, or if the protection of the Property or of Beneficiary's interest therein shall, in Beneficiary's reasonable judgment, require such payment.

#### 5. LATE CHARGES; DEFAULT INTEREST

In the event that any payment on the Indebtedness or a portion thereof is not paid the date it is due (without taking into consideration any other grace periods) Beneficiary may collect, and Grantor agrees to pay with such payment, a "**Late Charge**" of five percent (5%) of the amount of the payment overdue as liquidated damages for the additional expense of handling such delinquent payment or payments. Also, in the event of a default hereunder (subject to any requirements of notice), and if Beneficiary declares the entire Indebtedness immediately due and payable, the balance due shall bear interest at the default interest rate. References in this Deed of Trust to the "**default interest rate**" shall mean interest of twelve percent (12%) per annum.

#### 6. POSSESSION AND MAINTENANCE OF THE PROPERTY

(a) Until in default, Grantor may remain in possession and control of the Property.

(b) Grantor agrees to maintain the Property in good condition and state of repair, to neither commit nor suffer any waste, to promptly comply with all requirements of federal, state and municipal authorities, and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting the Property or the use thereof, and to pay all fees or charges of any kind in connection therewith. Beneficiary may recover as damages for any breach of this covenant and agreement the amount it would cost to put the Property in the condition called for herein. Proof of impairment of security shall be unnecessary in any suit or proceeding under this subsection or any other provision of this Deed of Trust or under any other documents which this Deed of Trust secures.

(c) Grantor shall not conduct or permit any nuisance to be maintained on the Property.

(d) Beneficiary and its agents and representatives may, upon forty-eight (48) hours' prior notice, except in the case of an emergency when no notice shall be required, enter upon the Property to attend to Beneficiary's interest and to inspect the Property.

(e) Grantor shall do all other acts, in addition to those set forth in this Deed of Trust, that from the character and use of the Property are reasonably necessary to protect and preserve the security.

## 7. RESTORATION

Subject to the provisions dealing with condemnation and casualty, Grantor covenants and agrees to restore promptly and in a good, workmanlike manner any Improvements which may be damaged or destroyed, and to pay when due all costs incurred in connection with such restoration.

## 8. ALTERATION AND REMOVAL OF PROPERTY

None of the Improvements having a value in excess of \$50,000.00 shall be structurally altered, removed or demolished without Beneficiary's prior written consent, nor shall any fixture or item of personal property constituting a part of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability owned by the Grantor free and clear of any lien or security interest except such as may be approved in writing by Beneficiary. Beneficiary has consented to the alterations described in the Approved Remodeling Plan, as defined in the Purchase and Sale Agreement between Beneficiary, as seller, and Grantor, as buyer, dated effective October 18, 2017.

## 9. LIENS

Grantor shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over the lien of this Deed of Trust, except for any lien of taxes and assessments not due.

## 10. INSURANCE

Grantor will at all times provide, maintain and keep in force:

(a) Policies of all risk replacement cost insurance with agreed amount endorsements in an amount not less than the greater of (i) one hundred percent (100%) of the then full replacement costs of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) without deduction for physical depreciation, or (ii) any amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies. Beneficiary must be named as a mortgagee and loss payee on such policies.

(b) Commercial general liability insurance on an "occurrence basis" against claims for bodily injury, death or property damage occurring on or about the Property, including elevators and escalators, if any, and on or in the streets adjoining the same, to afford protection in a "single limit" in the amount of one million dollars (\$1,000,000) in the event of bodily injury to or death of any number of persons or of damage to property arising out of one occurrence.

All policies of such insurance shall be issued by companies approved by Beneficiary having a Best's rating satisfactory to Beneficiary of at least A+(XII), shall be subject to the approval of Beneficiary as to the amount, content and forms of policies and expiration dates, shall contain a Noncontributory Standard Mortgagee's Clause and the Lender's Loss Payable Endorsement

(form 438 BFU NS) or their equivalents, in favor of Beneficiary, and shall provide that the proceeds thereof shall be payable to Beneficiary. All policies of such insurance shall contain a stipulation that coverage will not be canceled or diminished without a minimum of thirty (30) days notice to Beneficiary. Grantor shall deliver to Beneficiary copies of all such policies of insurance. By policy endorsement, all policies of liability insurance maintained by Grantor shall name Beneficiary as an additional insured. Grantor hereby assigns to Beneficiary all insurance proceeds which it may be entitled to receive and such proceeds shall be disposed of in accordance with the provisions of Section 12.

WARNING: UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW. (Each reference to "you" and "your" shall refer to Grantor and each reference to "us" and "we" shall refer to Beneficiary.)

#### 11. HAZARDOUS MATERIALS

(a) Grantor shall defend, indemnify and hold harmless Beneficiary from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims (collectively, "**Claims**") arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any hazardous material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "superfund" or "super lien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous material).

(b) For purposes of this Section 11, the term "**hazardous material**" shall mean any and all hazardous or toxic substances, wastes or materials as listed or defined by any federal, state or local statute, regulation or ordinance pertaining to the protection of human health or the environment.

## 12. CONDEMNATION OR CASUALTY

All compensation, awards, damages, rights of action, and proceeds, including the proceeds of any insurance affecting the Property, arising out of any taking or damage by reason of any public or private improvement (including change of grade), condemnation proceeding, zoning change or conveyance in lieu thereof, fire, earthquake or other casualty (collectively the "**Proceeds**"), are hereby assigned to Beneficiary. Such proceeds shall be paid to Beneficiary, which may, after deducting therefrom all of its expenses, including attorney fees, release any money received by it, apply the same on any Indebtedness and Charges secured hereby or apply the same to the repair or restoration of the Property as it may elect. Grantor agrees to execute such further assignments to Beneficiary of any awards, damages, rights of action and Proceeds as Beneficiary or Trustee may require. In the event any Proceeds are paid to Grantor, such Proceeds shall promptly (within five (5) days of receipt thereof) be paid over to Beneficiary for the purposes set forth in this section.

## 13. DEFENSE OF ACTIONS

Grantor agrees to appear and defend any suit, action or proceeding that might affect the value of this Deed of Trust or the security itself or the rights and powers of Beneficiary or Trustee. Beneficiary may appear in and defend any such action should Beneficiary elect to do so. Grantor will at all times indemnify and on demand reimburse Beneficiary for, any and all loss, damage, expense or costs, including the cost of evidence of title, expert witness fees and attorney fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Deed of Trust with interest at a rate per annum equal to ten percent (10%) per annum above the interest rate stated in the Note (*i.e.*, the default interest rate), and shall be due and payable on demand.

## 14. BENEFICIARY'S RIGHT TO CURE DEFAULT

Should Grantor fail to make any payment to other than Beneficiary or to do any act as herein provided, then Beneficiary, without obligation to do so, without notice to or demand upon Grantor and without releasing Grantor from any obligation hereunder, may make or do the same in such a manner and to such extent as it may deem necessary to protect the security hereof, Beneficiary being authorized to enter upon the Property for such purposes, to pay, purchase, contest, or compromise any encumbrance, charge or lien, which in the judgment of Beneficiary appears to be prior or superior hereto, and, in exercising any such power, to incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, expert witness fees and attorney fees.

## 15. REPAYMENT OF ADVANCES

Upon written notice, Grantor shall repay immediately all sums expended or advanced under any provision of this Deed of Trust by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at a rate equal to the interest rate stated in the Note until paid, and the repayment thereof shall be secured by this Deed of Trust. Grantor agrees to pay, in addition to the amount of such expenses or advances, all costs and expenses incurred by Beneficiary in collecting any such amounts, together with a reasonable attorneys fee.

## 16. IMPOSITION OF TAX BY STATE

(a) The following shall constitute state taxes to which this subsection applies:

(i) A specific tax upon trust deeds or upon all or any part of the indebtedness secured by a trust deed;

(ii) A specific tax on a grantor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a trust deed;

(iii) A tax on a trust deed chargeable against a beneficiary or a holder of the note secured thereby; and

(iv) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a grantor.

Provided, however, and notwithstanding the foregoing description of state taxes, this subsection shall not apply to any state tax measured by or assessed against the income of Beneficiary.

(b) If any state tax to which this subsection applies is enacted subsequent to the date of this Deed of Trust, this shall have the same effect as a default, and Beneficiary may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

(i) Grantor may lawfully pay any tax or charge imposed by the state tax; and

(ii) Grantor pays or offers to pay the tax or charge within thirty (30) days after notice from Beneficiary that the state tax has been enacted.

## 17. SECURITY AND ZONING

Grantor shall not, without first obtaining Beneficiary's written consent, change the general nature of the Property or initiate or acquiesce in any zoning reclassification.



18. ACCOUNTING

Grantor shall keep and maintain or will cause to be kept and maintained in accordance with sound accounting practices accurate and proper books of record and account relating to the Property. Grantor shall permit Beneficiary to examine the books of account and other records of Grantor relating to the Property at such reasonable times and intervals as Beneficiary may desire.

19. JUNIOR FINANCING

Without limiting the other provisions of this Deed of Trust restricting encumbrances on the Property, it is agreed that there shall be no financing junior to this Deed of Trust on the Property and that while any of the Indebtedness secured herein is outstanding, the Property shall not be encumbered by any lien other than the lien of this Deed of Trust.

20. ASSIGNMENT OF RENTS AND PROFITS UNDER ALL LEASES AND RENTAL AGREEMENTS

Grantor absolutely and irrevocably assigns to Beneficiary the rents, issues and profits of the Property, and all of the right, title and interest of Grantor in and under all leases and rental agreements now or hereinafter affecting said Property. This is intended to be a present assignment of rents pursuant to ORS 93.806.

21. SUBSTITUTION OF TRUSTEE

Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any successor Trustee appointed hereunder. Upon such appointment, and without conveyance to the successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor Trustee.

22. TRANSFER OR FURTHER ENCUMBRANCE BY GRANTOR

(a) If, while any Indebtedness secured hereby is outstanding, Grantor, without the prior written approval of Beneficiary, which approval may be granted or withheld in Beneficiary's sole discretion, (i) sells, assigns, transfers or otherwise ceases to own or manage the Property or any interest therein or (ii) further encumbers the Property or any part thereof or any interest therein, or if there is a change in ownership in Grantor of more than fifty percent (50%), then Beneficiary may, at its option, accelerate the Indebtedness secured hereby and declare a default hereunder. For the purpose of this subsection (a), a sale by way of a land sale contract or a lease containing an option to purchase shall constitute a prohibited transfer under this subsection (a).

(b) Consent by Beneficiary to one transfer shall not constitute a consent to other transfers or a waiver of this section. No transfer by Grantor shall relieve Grantor or any guarantor of Grantor of liability for payment of the Indebtedness. Following a transfer, Beneficiary may agree to any extension of time for payment or modification of the terms of this Deed of Trust or the Note or waive any right or remedy under this Deed of Trust or the Note without relieving Grantor or any guarantor of Grantor from liability. Grantor waives notice, presentment and protest with respect to the Indebtedness.

#### 23. SECURITY AGREEMENT; SECURITY INTEREST AND FIXTURE FILING

(a) This instrument shall constitute a security agreement and fixture filing with respect to the personal property and fixtures included in the description of the Property.

(b) Grantor shall authorize Beneficiary to file financing statements and take whatever other action is requested by Beneficiary to perfect and continue Beneficiary's security interest in such personal property and fixtures. Beneficiary may also file copies or reproductions of this Deed of Trust as a financing statement at any time and without further authorization from Grantor. Grantor will reimburse Beneficiary for all filing or recording fees incurred in perfecting or continuing this security interest.

#### 24. RECONVEYANCE ON FULL PERFORMANCE

If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Beneficiary shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statements on file. The reconveyance and filing fees shall be paid by Grantor.

## 25. DEFAULT

The following shall constitute events of default:

(a) If Grantor shall fail to pay any sum due under the Note;

(b) If Grantor shall fail to pay any other amount required to be paid by Grantor pursuant to this Deed of Trust (including, without limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens) within ten (10) days after written notice of nonpayment shall have been given to Grantor by Beneficiary specifying the default; provided, however, Beneficiary shall not be required to give a notice of a failure to pay the Note in full on the Maturity Date or more than one (1) such notice of nonpayment during any single calendar year, after which it shall be an event of default during the balance of such calendar year if Grantor shall fail to pay any sum due under the Note or any other amount required to be paid by Grantor pursuant to this Deed of Trust within fifteen (15) days of the date due without the necessity of notice;

(c) If Grantor encumbers the Property or if Grantor transfers the Property without the written approval of Beneficiary as set forth above;

(d) If Grantor shall become insolvent or shall admit in writing its inability to meet its debts as they become due, or if Grantor shall file a voluntary petition in bankruptcy, or make an assignment (or grant a security interest in all or a substantial part of its assets) for the benefit of creditors or consent to the appointment of a receiver or trustee for any portion of the Property or all or a substantial part of its assets, or file a petition, answer or other instrument seeking or acquiescing in the arrangements of its debts, or if a petition is filed against Grantor under any of the chapters of the federal bankruptcy code and is not discharged within thirty (30) days of such filing, or if Grantor seeks any other relief under the federal bankruptcy code or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof;

(e) If a decree or order of court having jurisdiction shall have been entered (i) adjudging Grantor to be bankrupt or insolvent, or (ii) approving a petition by one other than Grantor seeking any relief whatsoever involving Grantor or any portion of the Property under the federal bankruptcy code or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof, or (iii) appointing a receiver or trustee or assignee in bankruptcy or insolvency of Grantor or of any of its Property, or (iv) directing the winding up or liquidation of the affairs of Grantor, and such decree or order shall have continued undischarged or unstayed for a period of thirty (30) days;

(f) If any representation or warranty of Grantor contained herein shall be untrue in any material respect;

(g) If Grantor shall default in the due observance or performance of any other covenant, term, condition or agreement contained in this Deed of Trust or any of the other documents connected therewith and not mentioned above, and Grantor shall fail to cure the same

within thirty (30) days after written notice shall have been given to Grantor by Beneficiary specifying such default and requiring that the same be cured or, if the default cannot be cured within such thirty (30) day period, if Grantor shall fail within such time to commence and pursue curative action with reasonable diligence.

## 26. RIGHTS AND REMEDIES ON DEFAULT

(a) Upon the occurrence of any event of default and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the following rights and remedies which remedies shall be cumulative and in addition to any other remedies provided by law:

(i) Beneficiary may declare the entire Indebtedness immediately due and payable.

(ii) Trustee, at Beneficiary's direction, shall have the right to foreclose by notice and sale, or Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any such action, Beneficiary shall be entitled to obtain a deficiency judgment for any amount by which the Indebtedness secured hereby exceeds the sale proceeds.

(iii) Notwithstanding clause (ii), Beneficiary shall have the right, at its sole option, to pursue an independent action upon the Note. The Note and this Deed of Trust are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

(iv) Trustee and Beneficiary shall have any other right or remedy provided in this Deed of Trust, the Note, or any other instrument delivered by Grantor in connection therewith, or available at law, in equity, or otherwise.

(v) Beneficiary may at any time, without notice, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of the security for the Indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue or otherwise collect the rents, revenues and profits, if any, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any Indebtedness secured hereby, and in such order as Beneficiary may determine.

(vi) Beneficiary shall have all rights and remedies under the Uniform Commercial Code as now enacted in the state of Oregon and as hereafter amended. Beneficiary shall give Grantor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or any other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

(b) In exercising its rights and remedies, the Trustee or Beneficiary may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the

Property may be sold without selling other portions. Beneficiary may bid at any public sale on all or any portion of the Property.

(c) A waiver by either party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. An election by Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Deed of Trust are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Grantor shall not affect Beneficiary's right to declare a default and exercise its remedies under this Deed of Trust.

(d) In the event suit or action is instituted to enforce or interpret any of the terms of this Deed of Trust, the prevailing party shall be entitled to recover its reasonable attorney fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the default interest rate provided for in Section 5. Expenses covered by this subsection include (without limitation) the cost of searching records, discovery deposition costs, obtaining title reports, surveyors' reports, attorney opinions, title insurance and fees for the Trustee.

(e) If Grantor meets certain conditions, Grantor shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust. Those conditions are that Grantor (i) pay Beneficiary all sums which then would be due under the Deed of Trust and the Note had no acceleration occurred; (ii) cure any default of any other covenant or agreement; (iii) pay all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees and Trustee's fees; and (iv) take such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property and Grantor's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Grantor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred.

(f) If the Trustee forecloses by advertisement and sale, as provided above, Trustee shall apply the proceeds of sale to the payment of (i) expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (ii) to the Indebtedness secured by this Deed of Trust, (iii) to all persons having recorded liens subsequent to the interest of the Trustee and the Deed of Trust, as their interest may appear in the order of their priority and (iv) the surplus, if any, to the Grantor or to the Grantor's successor in interest entitled to such surplus.

## 27. MISCELLANEOUS

(a) Time is of the essence of this Deed of Trust.

(b) Subject to the limitations stated in this Deed of Trust on transfer of Grantor's interest and subject to the provisions of applicable law with respect to successor trustees, this Deed of Trust shall be binding upon and inure to the benefit of the parties, including, but not limited to, their successors, assigns, heirs, devisees, legatees, administrators and personal representatives.

(c) In construing this Deed of Trust, the terms "**Deed of Trust**" or "**conveyance**" shall encompass the term "**security agreement**" when the instrument is being construed with respect to any personal property.

(d) Any notice under this Deed of Trust shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, addressed to the party at the address stated in this Deed of Trust. Any party may change its address for notices by written notice to the other.

(e) If any of the provisions contained in the Note or this Deed of Trust shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions in this Deed of Trust and the Note shall not be affected.

(f) This Deed of Trust and any of its terms may only be changed, waived, discharged, or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought. Any agreement subsequently made by Grantor or Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

(g) The Grantor within ten (10) days after written request from Beneficiary shall furnish a duly acknowledged written statement setting forth the amount of the Indebtedness secured by this Deed of Trust, and stating either that no setoffs or defenses exist against the Deed of Trust debt, or, if such setoffs or defenses are alleged to exist, the nature thereof.

(h) This Deed of Trust shall be governed by the laws of the state of Oregon, without regard to those governing conflicts of law, and all parties consent to the jurisdiction of the courts of the state of Oregon and service of process therein.

(i) Grantor on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to the sale of any portion of the Property which might have been retained by Grantor before foreclosing upon and selling any other portion as may be conveyed by Grantor subject to this Deed of Trust.

(j) Except as otherwise expressly stated in this Deed of Trust, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any

reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of either the request or Beneficiary's judgment.

(k) It is mutually agreed by Grantor and Beneficiary that the respective parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Deed of Trust.

(l) If Grantor is more than one person, then each Grantor shall be deemed jointly and severally liable under this Deed of Trust and under the Note.

(m) Grantor represents, acknowledges and agrees that this Deed of Trust is and will at all times remain a nonresidential trust deed.

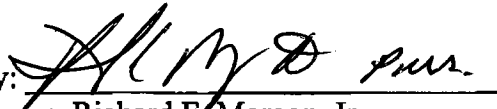
(n) The term "**Beneficiary**" shall mean the holder and owner, including pledgees, of the Note secured hereby whether or not named as Beneficiary herein. Without affecting the liability of any other person for payment of any obligation mentioned herein and without affecting the lien hereof upon any portion of the Property not released, Beneficiary may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or part of the Property, take or release any other security or make compositions or other arrangements with debtors. Beneficiary may also accept additional security, either concurrently herewith or thereafter, and sell the same or otherwise realize thereon, either before, concurrently with, or after sale hereunder.

(o) This Deed of Trust shall be so construed that wherever applicable, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of any gender shall be applicable to all genders and shall likewise be so construed as applicable to and including a partnership or corporation.

(p) Nothing contained in this conveyance or in any other document is intended to create any partnership, joint venture or association between Grantor and Beneficiary, or in any way make Beneficiary a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

By signing below, Grantor accepts and agrees to the terms and covenants contained in this Deed of Trust and in any rider(s) executed by Grantor and recorded with it.

NORTH STATE GROCERY, INC.,  
a California corporation

By:   
Name: Richard E. Morgan, Jr.  
Its: President

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
by Richard E. Morgan, Jr., as President of NORTH STATE GROCERY, INC., a California  
corporation.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_



# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Shasta }

On November 29, 2017 before me, Brad Askeland (Notary Public)  
(Here insert name and title of the officer)

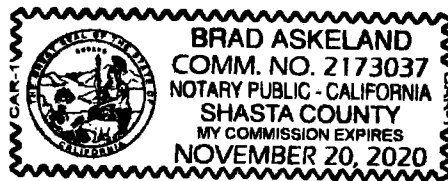
personally appeared Richard E. Morgan, Jr.  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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]  
Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)  
☐ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by the foregoing Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said Deed of Trust or pursuant to statute, to cancel all evidences of Indebtedness secured by said Deed of Trust (which are delivered to you herewith together with said Deed of Trust) and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust the estate now held by you under the same. Mail reconveyance and documents to:

\_\_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Beneficiary

**EXHIBIT A**

**[Legal Description]**

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Block 12 of THE ORIGINAL TOWN OF KLAMATH FALLS (formerly Linkville), according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

## **EXHIBIT B**

### **[Permitted Exceptions]**

038071/00002/8433847v3