

AmeriTitle
M2 236213 AM

2018-007066

Klamath County, Oregon

06/12/2018 10:41:00 AM

Fee: \$212.00

WHEN RECORDED, RETURN TO:

Crestmark Bank
5480 Corporate Drive, Suite 350
Troy, Michigan 48098
Attn: Stacey Farmer

Klamath County
Tax Account No. _____

**TERM LOAN TRUST DEED,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING
(OREGON)**

Dated: June 7, 2018

Grantor: **Cypress Creek Land Holdings 2, LLC**

Trustee: **AmeriTitle, Inc., authorized title agent for Stewart Title Guaranty Company**

Beneficiary: **Crestmark Bank**

The tax account numbers for the property subject to the lien or in which the interest is created are:
[Note: not all counties in Oregon will have or require all of the various designations below.]

Levy Code: _____
Account No. _____
Map No. _____
Tax Lot No.: _____

ADDITIONAL STATUTORY NOTICES:

- A. The address of the entity holding a lien or other interest created by this instrument is:

Crestmark Bank
5480 Corporate Drive, Suite 350
Troy, Michigan 48098

B. Type of Transaction: Creation of deed of trust lien and security interests encumbering the properties described herein. This Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "**Trust Deed**") is made and executed this 7th day of June, 2018 (the "**Closing Date**"), by Cypress Creek Land Holdings 2, a Delaware limited liability company ("**Grantor**") to AmeriTitle Company, Inc., authorized title agent for Stewart Title Guaranty Company ("**Trustee**"), in favor of Crestmark Bank, a Michigan banking corporation ("**Beneficiary**").

Beneficiary is making a loan to Grantor in the amount of One Million Five Hundred Fourteen Thousand Four Hundred and 00/100 Dollars (\$1,514,400.00) (the "**Loan**"). The Loan is evidenced by the Promissory Note (Term Loan) dated the Closing Date in the original principal amount of the Loan (the "**Note**"). The Loan will be advanced under a Business Term Loan Agreement between Grantor and Beneficiary dated the Closing Date (the "**Loan Agreement**"). This Trust Deed, the Note, the Loan Agreement and all other agreements or instruments executed by Grantor at any time in connection with them, as they may be amended or supplemented from time to time, are sometimes collectively referred to below as the "**Loan Documents**".

- C. See Section 5.1.
- D. See paragraphs following Section 12.15.

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 GRANT AND CONVEYANCE

1.1 General Grant. Grantor hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale, and right of entry and possession, the following described real property (the "**Real Property**"):

1.1.1 Real Property. All of the right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to the real property located in Klamath County, State of Oregon (the "**Property**") as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

1.1.2 Buildings, Improvements and Interests. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to: (a) All buildings, improvements, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments now or hereafter constructed upon, and all renewals and replacements of, any of the foregoing, which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property (the "**Improvements**"); (b) if any portion of the Property comprises all or a portion of a planned or restricted development or a condominium project ("**Development**") and Grantor is the "declarant", "developer", "owner", or other similarly designated controlling party ("**Developer**") under the restrictive covenants, declaration of condominium owner, planned unit development, or other controlling document who, as such, now has or will hereafter have special rights and privileges with respect to the Development and/or the related owner's association which are not enjoyed by all other owners (collectively,

and designates Beneficiary as the successor Developer to replace Grantor; provided, however, that such appointment shall not take effect unless and until (A) Beneficiary becomes the fee simple owner of all or a portion of the Development by reason of the public or judicial foreclosure of this Trust Deed (or by means of a deed in lieu thereof), and (B) Beneficiary accepts such appointment in a writing which is recorded in the public records of the county in which the Development is located; and (c) All easements, licenses, streets, ways, alleys, roads, streets, passages, rights of way, minerals, oil, gas and other hydrocarbon substances, development rights, air rights, water, water courses, water rights, and water stock (whether now owned or hereafter acquired by Grantor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or to any portion of the Property.

1.1.3 Tenements, Hereditaments. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to all of the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to any of the Property or the Improvements, or any portion of the Property or the Improvements, or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims, and demands of every nature whatsoever, at law or in equity, which Grantor may have or may hereafter acquire in and to the Property, the Improvements, or any portion thereof.

1.1.4 Leases, Rents, Issues, Etc. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to all leases and subleases of all or any portion of the Property or the Improvements now or hereafter existing or entered into, and all lease agreements and documents evidencing the same; and all right, title and interest of Grantor thereunder, including without limitation, all rents, subrents, room rents and other amounts received for use of any rooms in the Property, including the Improvements, and any and all room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such room rents, issues, royalties, security deposits, income and profits of and from the Property, the Improvements, or any portion thereof.

1.2 Security Interest. Grantor hereby assigns and grants to Beneficiary a security interest in the following described property, whether now or hereafter existing, and in which Grantor now has or hereafter obtains any right, title, estate or interest, but only to the extent of Grantor's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof (collectively the "**Personalty**"):

1.2.1 Tangible Personal Property. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to (as they pertain to the Property): (a) All goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Property, delivered to the Property for incorporation or use in any construction, renovation, operation or maintenance of the Property or the Improvements, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Property or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Property; (b) All furniture, fixtures and equipment as equipment is defined in the Uniform Commercial Code; (c) All architectural, engineering, development, construction and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and architect thereunder, relating to the construction, development, ownership or maintenance of the Property or the Improvements; (d) All engineering reports, surveys, soil reports and other documents relating to the Property; (e) All modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; and (f) All proceeds of each of the foregoing.

1.2.2 Permits, Names, Rights, Etc. All right, title interest and estate of Grantor, now owned or hereafter acquired, in and to: (a) All contracts, permits, franchises, privileges, grants, consents,

licenses, or permits, authorizations, and approvals heretofore or hereafter granted by the United States, by the City of _____ or the State of Oregon or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Grantor and utilized in connection with the Property and the Improvements thereon or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law; (b) All names under or by which the Property or any of the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Grantor's ownership and operation of the Property; (c) All contracts, contract rights, rights to payment, general intangibles, documents, instructions, accounts, water stock arising in connection with Grantor's ownership, legal or equitable claims, judgments, and awards now or hereafter accruing to the benefit of Grantor respecting the Property and the Improvements; (d) All shares of stock, partnership interests, or other evidence of ownership of any part of the Property or the Improvements that is owned by Grantor in common with others; (e) All documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and (f) All amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

1.2.3 Awards. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to: (a) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property, the Improvements or any portion of the Improvements, or of any other Improvements now or hereafter situate thereon or any estate or easement in the Property (including any awards for change of grade of streets); (b) All insurance policies and all proceeds of insurance paid on account of any partial or total destruction of the Improvements or any portion thereof; (c) All causes of action and recoveries for any loss or diminution in the value of the Property or the Improvements; and (d) All proceeds of each of the foregoing.

1.2.4 Plans and Utility Taps. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to: All plans and any and all replacements, modifications, and amendments thereto and any and all contracts, agreements or commitments between Grantor and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Property and the Improvements thereon. Grantor hereby irrevocably appoints Beneficiary as Grantor's true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Grantor necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Property and the Improvements thereon.

1.2.5 Loan Proceeds. All right, title, interest and estate of Grantor, now owned or hereafter acquired, in and to all proceeds of the Loan made by Beneficiary to Grantor which proceeds are held by Beneficiary, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, and payments of any kind to secure any and all of Grantor's obligations to Beneficiary.

1.2.6 Contracts. All contracts and agreements which have been or shall hereinafter be entered into relating to the construction, development, sale, lease, operation, including any franchise, hotel reservation or affiliation agreements to the extent assignable or transferable, or use of all or a portion of the Property or the Improvements, and all governmental licenses or permits obtained for the lawful construction of the Improvements.

1.2.7 Accounts. All accounts of Grantor, presently existing or hereafter arising, including all accounts as defined in the Oregon Uniform Commercial Code, as amended, established in connection with or by reason of Grantor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.8 Documents. All documents of Grantor, presently existing or hereafter arising, including all documents as defined in the Oregon Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Grantor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.9 Instruments. All instruments of Grantor, presently existing or hereafter arising, including all instruments as defined in the Oregon Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Grantor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.10 Deposit Account. All of Grantor's interests in any and all deposit accounts pertaining to the Property established at Beneficiary in the name of Beneficiary in connection with the extension of any credit to Grantor, whether such deposit accounts are now existing or hereafter created, together with all interest and other funds paid in connection with the deposit accounts, all renewals of the deposit accounts, and all proceeds, renewals and rollovers thereof and all additions and accessions thereto.

1.2.11 General Intangibles. All general intangibles of Grantor, presently existing or hereafter arising, including general intangibles as defined in the Uniform Commercial Code, as it exists and may be amended, choses in action, proceeds, contracts, distributions, dividends, refunds, security deposits, judgments, insurance claims, any right to payment of any nature, intellectual property rights or licenses, any other rights or assets of Grantor customarily or for accounting purposes classified as general intangibles, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.3 Security Agreement. This Trust Deed constitutes a security agreement with respect to the Personalty, and Beneficiary shall have all of the rights and remedies of a secured party under the Loan Documents and the Uniform Commercial Code, as well as all other rights and remedies available at law or in equity. Grantor and Beneficiary acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Grantor, regardless of when advances to Grantor are actually made or when the Trust Estate (as defined below) is acquired.

1.4 Trust Estate. The Real Property and the Personalty are sometimes hereinafter collectively referred to as the "**Trust Estate**". Notwithstanding anything to the contrary contained herein, the Real Property, Improvements, Personalty and Trust Estate expressly exclude any fixtures, machinery, appliances, equipment, furniture or other personal property placed on the Land by a tenant of Grantor's in connection with the construction and operation of the proposed photovoltaic solar power generation facility on the Land (the "Solar Facility"), or any tangible personal property, permits, names, rights, awards, plans, utility taps, accounts, documents, instruments, deposit accounts or general intangibles associated therewith.

1.5 Fixture Filing. This Trust Deed constitutes a fixture filing pursuant to ORS Section 79.0502(3). The addresses of the secured party (Beneficiary) and the debtor (Grantor) are set forth in Section 12.1 of this Trust Deed. This Trust Deed is to be recorded in the real estate records in the County Recorder's office of the county in which the Real Property is located. Grantor is the record owner of the Real Property.

ARTICLE 2 OBLIGATION SECURED

2.1 Obligations. This Trust Deed is given for the purpose of securing the following obligations (collectively the "**Obligations**") of Grantor:

2.1.1 Note. The payment and performance of each and every agreement and obligation under the Note, including without limitation, the payment of principal and interest under the Note.

2.1.2 Other Loan Documents. The payment and performance of each and every agreement and obligation of Grantor under this Trust Deed, the Note, the Loan Agreement, and any other Loan Document.

2.1.3 Advances by Trustee or Beneficiary. The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Trust Deed, the Loan Agreement, or any other Loan Document, together with interest thereon as provided in this Trust Deed.

2.1.4 Extensions, Etc. The payment and performance of any extensions of, renewals of, modifications of, or additional advances under the Note, or any of the obligations evidenced by the Note, regardless of the extent of or the subject matter of any such extension, renewal, modification or additional advance.

2.1.5 Other Obligations. The payment and performance of any other note or obligation reciting that it is secured by this Trust Deed. Grantor expressly acknowledges its mutual intent with Beneficiary that the security interest created by this Trust Deed secures any and all present and future debts, obligations, and liabilities of Grantor to Beneficiary without any limitation whatsoever.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Property. Grantor represents and warrants to Beneficiary as follows:

3.1.1 Fee Title. Grantor is the owner of fee simple marketable title in and to the Real Property.

3.1.2 Defense of Title. Grantor shall defend title to the Property and the Improvements against all claims and demands whatsoever.

3.1.3 Exceptions to Title. With the exception of such exceptions to title as are identified in Exhibit B, if any, attached hereto and incorporated herein by this reference (the "***Permitted Encumbrances***"), the Property and the Improvements are free and clear of all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever in favor of any third party.

3.1.4 Lien Priority. With the exception of any Permitted Encumbrances, the lien created by this Trust Deed upon the Property and the Improvements is a good and valid first lien, free and clear of all liens, encumbrances and exceptions.

3.1.5 Hazardous Material and Environmental Laws. Grantor further represents and warrants that Grantor has complied, and will comply and cause all occupants of the Property to comply, with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("***Environmental Laws***"). To the best of Grantor's knowledge, no Hazardous Materials (as hereinafter defined) have been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Property or the Improvements in violation of any Environmental Laws. Grantor has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Property or the Improvements. For purposes of the foregoing, the term "***Hazardous Materials***" shall mean any hazardous toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Oregon, the United States Government or any other governmental or quasi-governmental body or agency.

3.1.6 Grantor Representations. Grantor's principal place of business as well as its main office is located in the State of California. Grantor's state of organization is Delaware. Grantor's exact legal name is as set forth in the first paragraph of this Trust Deed.

3.2 Personalty. Grantor further represents and warrants to Beneficiary as follows:

3.2.1 Owner of Personalty. Grantor is the owner, or upon acquisition thereof, will be the owner of the Personalty.

3.2.2 No Prior Liens. The Personalty is, or upon acquisition thereof by Grantor, will be free and clear of all liens, claims, encumbrances, restrictions, charges, and security interests in favor of any third party except for any Permitted Encumbrances.

3.2.3 Location of Personality. The Personality will be located in the State of Oregon, and other than temporary (not to exceed three (3) months) uses outside that state in the ordinary course of Grantor's business, will not be removed from that state without the prior written consent of Beneficiary.

ARTICLE 4 MAINTENANCE OF TRUST ESTATE

4.1 Maintenance. Subject to the rights and obligations of tenants, Grantor shall do each of the following: (a) maintain the Trust Estate at all times in good condition and repair; (b) not commit any waste of the Trust Estate, or remove, damage, demolish, or without the prior written permission of Beneficiary, structurally alter any of the Improvements; (c) complete promptly and in good and workmanlike manner any Improvement on the Property; (d) except to the extent that insurance proceeds are applied by Beneficiary to the satisfaction of the Obligations in accordance with Article 5 of this Trust Deed, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof, which may for any reason be damaged or destroyed; (e) comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Trust Estate; (f) not commit or permit any act upon the Trust Estate in violation of law; and (g) do all acts which by reason of the character or use of the Trust Estate may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

ARTICLE 5 INSURANCE

5.1 Insurance. Grantor shall secure and maintain or cause to be maintained in force on the Trust Estate and in connection with the construction of any future Improvements: all insurance as may be required by the Loan Agreement or by law. All such insurance policies must cover all risks required to be covered by Beneficiary, comply with any requirements set forth in the Loan Agreement and be approved by Beneficiary as to amount, form, terms, deductibles and insurer consistent with the requirements of the Loan Agreement. All such policies of insurance shall include Beneficiary as an additional insured or loss payee, as appropriate. All such insurance policies shall be endorsed to provide that such policies will not be cancelled or amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary.

The following notice is provided pursuant to ORS Section 746.201(1):

WARNING

UNLESS YOU (GRANTOR) PROVIDE US (BENEFICIARY) 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.

5.2 Notice of Casualty. In the event of loss or damage to the Trust Estate in excess of Ten Thousand Dollars (\$10,000.00), or any portion of the Trust Estate, Grantor shall immediately give notice thereof to Beneficiary.

5.3 Proceeds of Insurance. All proceeds of insurance on the Trust Estate, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Trust Estate, or for any damage or injury to it or for any loss or diminution in the value of the Trust Estate, are hereby assigned to and shall be paid to Beneficiary, except as otherwise provided in the Loan Agreement. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with Grantor in enjoining any loss covered by insurance.

5.4 Disposition of Policies on Foreclosure. In the event Beneficiary exercises the power of sale or foreclosure provisions of this Trust Deed under ORS Section 86.710 or makes any other transfer of title or assignment of the Trust Estate in extinguishment in whole or in part of the Obligations, all right, title and then existing interest of Grantor in and to the policies of insurance required by Section 5.1 of this Trust Deed shall inure to the benefit of and pass to the transferee of the interests conveyed under this Trust Deed or to the purchaser at the foreclosure sale, as the case may be.

ARTICLE 6 INDEMNIFICATION AND OFF SET

6.1 Indemnification. Grantor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

6.1.1 General Indemnification. Grantor shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, the Note, the Loan Agreement, this Trust Deed, any other Loan Documents evidencing or securing the Note, or the construction, use or occupation of the Trust Estate, or any part thereof, or the Property, except for claims based upon Beneficiary's negligence or willful misconduct. If Beneficiary commences an action against Grantor to enforce any of the terms, covenants or conditions of this Trust Deed or because of the breach by Grantor of any of the terms, covenants, or conditions, or for the recovery of any sum secured hereby, Grantor shall pay to Beneficiary reasonable attorneys' fees and costs actually incurred by Beneficiary. The right to such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Grantor breaches any term, covenant or condition of this Trust Deed, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach of Grantor, Grantor shall pay Beneficiary reasonable attorneys' fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Grantor by reason of such material breach.

6.1.2 Mechanics Liens. If Beneficiary is held liable or could be held liable for, or if the Property is subject to or could be subject to, any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture and improvements, then Grantor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorneys' fees and costs.

6.1.3 Hazardous Materials. During any period of time that Grantor owns or controls the Property or any part thereof, Grantor hereby agrees to indemnify, hold harmless and defend (by counsel of

Beneficiary's choice) Beneficiary, its directors, officers, employees, agent, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to reasonable attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Property, or (b) any activity carried on or undertaken on the Property, whether prior to or during the term of the Loan, and whether by Grantor or any predecessor in title or any employees, agents, contractors or subcontractors of Grantor or any predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances during any period of time that Grantor owns or controls the Property or any part thereof. Grantor hereby acknowledges and agrees that, notwithstanding any other provision of this Trust Deed or any of the other Loan Documents to the contrary, the obligations of Grantor under this Section 6.1.3 shall be unlimited personal obligations of Grantor and shall survive any foreclosure under this Trust Deed, any transfer in lieu thereof, and any satisfaction of the obligations of Grantor in connection with the Loan. Grantor acknowledges that Beneficiary's appraisal of the Property is such that Beneficiary would not extend the Loan but for the personal liability undertaken by Grantor for the obligations under this Section 6.1.3.

6.2 Off Set. All sums payable by Grantor under the Note and this Trust Deed shall be paid without notices, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Trust Estate or any part thereof; (b) any destruction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Trust Deed by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Grantor has or might have against Beneficiary; (f) the occurrence of an Event of Default or any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Trust Deed or of any other agreement with Grantor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

ARTICLE 7 TAXES AND IMPOSITIONS

7.1 Payment of Taxes and Impositions. Grantor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever (including without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) which are assessed or imposed upon the Trust Estate, or become due and payable, and which create, may create, or appear to create, a lien upon the Trust Estate or any portion of the Trust Estate, or upon any equipment or other facility used in the construction, operation or maintenance of the Trust Estate (all of which taxes, assessments and other governmental charges of like nature are referred to as the "**Impositions**"); provided, however, that if, by law, any such Imposition is payable, or may at the election of the taxpayer be paid in installments, Grantor may pay the same together with any accrued interest on the unpaid balance of such

Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

7.2 Evidence of Payment. Unless such Imposition is paid directly by Beneficiary pursuant to Section 8.3 of this Trust Deed, Grantor shall furnish Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Grantor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

7.3 Right to Contest. Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Grantor's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1 of this Trust Deed unless Grantor has given prior written notice to Beneficiary of Grantor's intent to so contest or object to an Imposition, and unless, at Beneficiary's option, (a) Grantor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Grantor shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Payment of Utilities. Grantor shall pay, when due, all utility charges incurred by Grantor for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.

8.2 Defense of Title. Grantor has and shall preserve good and marketable fee title to the Trust Estate free of all liens, claims, charges, security interests, encumbrances, easements or restrictions other than any Permitted Encumbrances. Except as provided otherwise in Section 7.3 of this Trust Deed and with the exception of any Permitted Encumbrances, Grantor shall promptly discharge and remove any lien or security interest which has, or may have, priority over or equality with the lien and security interest created by this Trust Deed. Grantor shall furnish to Beneficiary written notice of any litigation, default, lien, security interest or notice of default affecting the Trust Estate or title thereto, within ten (10) days of initial receipt of notice of such lien, security interest, litigation or default. Grantor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect to appear in or defend any such action or proceeding, Grantor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee. Grantor shall, at its cost, do, execute, acknowledge, and deliver all further deeds, conveyances, trust deeds, assignments, notices of assignments, security agreements, financing statements, transfers, acts and assurances as Beneficiary shall from time to time require, for the better perfecting, continuing, assuring, granting, conveying, assigning, transferring, and confirming unto Trustee and Beneficiary a lien (or the functional equivalent of a lien) against the Trust Estate, and all rights hereby granted, conveyed or assigned or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to grant, convey or assign to Trustee or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of the Note or the other Loan Documents.

8.3 Reserves for Taxes and Insurance. In furtherance of Article 5 and Article 7 of this Trust Deed and anything to the contrary herein notwithstanding, if any Event of Default shall occur and be continuing, and at Beneficiary's written request, Grantor shall deposit with Beneficiary in a noninterest bearing account, on the first day of each month, until the Note is paid in full, an amount equal to one twelfth of the annual Impositions, as defined in Article 7 of this Trust Deed, as reasonably estimated by Beneficiary to pay the installment of Impositions next due on the Trust Estate, and one twelfth of the estimated annual aggregate insurance premiums on all policies of insurance required in Article 5 of this Trust Deed. In such

event, Grantor shall cause all bills, statements or other documents relating to the Impositions and insurance premiums to be sent to Beneficiary. Providing Grantor has deposited sufficient funds with Beneficiary pursuant to this Section 8.3, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Beneficiary. Nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds deposited with Beneficiary pursuant to this Section 8.3. Beneficiary shall not be obligated to pay any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions and insurance premiums such portion of such payments as Beneficiary may, in Beneficiary's absolute discretion, deem proper, applying the balance on the principal of or interest on the Obligations secured hereby. Should Grantor fail to deposit with Beneficiary (exclusive of that portion of the payments which has been applied by Beneficiary on the principal of or interest on the Note) sums sufficient to fully pay such Impositions and insurance premiums at least thirty (30) days before delinquency thereof, Beneficiary, at Beneficiary's election, but without any obligation to do so, may advance any amounts required to make up the deficiency, which advances, if any, shall be secured by this Trust Deed and shall bear interest and be repayable to Beneficiary in the manner specified in Section 8.5 of this Trust Deed.

8.4 Performance in Grantor's Stead. Should Grantor fail to make any payment or to do any act as provided in this Trust Deed, then Beneficiary or Trustee, but without any obligation to do so, and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Trust Deed; and in exercising any such powers, incur any liability, or expend such reasonable amounts as Beneficiary may deem necessary therefor, including costs of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Trust Deed and shall accrue interest in accordance with the terms of the Note. Grantor hereby waives and releases all claims or causes of action which may hereafter arise in favor of Grantor against Beneficiary by reason of any action taken by Beneficiary pursuant to any power or authority granted in this Section 8.4, except for Beneficiary's negligence or willful misconduct.

8.5 Repayment of Advances. Grantor shall immediately repay to Beneficiary sums, with interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary or desirable to maintain this Trust Deed as a prior, valid, and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Trust Deed or to preserve, repair, or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Grantor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Trust Deed.

8.6 No Removal of Fixtures. Except for the Solar Facility, Grantor shall not, during the existence of this Trust Deed and without the written consent of Beneficiary, remove from the Real Property or the Improvements, any fixture, structure, or other improvement at any time affixed or constructively affixed to the Real Property or the Improvements or any portion thereof, or any Personalty, except in the ordinary course of Grantor's business.

8.7 Further Assurance. Grantor authorizes Beneficiary to file or record, as appropriate, such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required

by Beneficiary to carry out more effectively the purposes of this Trust Deed and to subject to the lien, security interest and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Trust Deed. Grantor authorizes (to the extent such authorization is valid under applicable law) Beneficiary to file such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect, or continue the perfection of, the security interests created by this Trust Deed. Grantor agrees not to change Grantor's name, location or state of organization from that set forth in Section 3.1.6 of this Trust Deed without thirty (30) days prior written notice to Beneficiary.

8.8 Attornment. Grantor shall assign to Beneficiary, as additional security for Grantor's performance of the Obligations, any and all existing or future lease agreements entered into by Grantor, as landlord, which pertain to the Property or the Improvements, or any portion thereof, and all such leases shall contain a covenant on the part of the tenant thereunder, enforceable by Beneficiary, obligating such tenant, upon request of Beneficiary, to attorn to and become a tenant of Beneficiary, or any purchaser from Trustee or through foreclosure of this Trust Deed, for the unexpired term, and subject to the terms and conditions, of such future lease agreements. The assignments of lease shall be in form and content satisfactory to Beneficiary.

8.9 No Further Encumbrances. As an express condition of Beneficiary making the loan secured by this Trust Deed, Grantor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Trust Estate or any interest therein nor cause or allow by operation of law the encumbrance of the Trust Estate or any interest therein without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Trust Deed. Encumbrance of the Trust Estate contrary to the provisions of this Section 8.9 without the express written consent of Beneficiary, shall constitute an Event of Default and at Beneficiary's option, Beneficiary may declare the entire balance of principal and interest immediately due and payable, whether the same be created by Grantor or an unaffiliated third party asserting a judgment lien, mechanics' or materialmen's lien or any other type of encumbrance or title defect. Beneficiary and Grantor acknowledge and agree that signage for the Trust Estate may be leased by Beneficiary from a third party without violation of this covenant, provided the signage is of a nature ordinarily leased for operation of a hotel suite franchise, its installation is accomplished without any mechanics' or materialmen's lien and, further provided, the signage is leased subject to ordinary and customary lease provisions that do not affect or encumber any portion of the Trust Estate except for the signage itself.

8.10 Due on Sale. Other than (a) a transfer by devise, descent or by operation of law upon the death of a joint tenant; (b) a transfer of Personalty in the ordinary course of Grantor's business; or (c) the grant of any leasehold interest approved by Beneficiary in writing, Grantor shall not sell, convey or otherwise transfer the Trust Estate or any part thereof or interest therein, without the prior written consent of Beneficiary. If the Trust Estate, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Beneficiary, or if Grantor be divested of title to the Trust Estate, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full principal indebtedness of the Note and the other Obligations, at the option of Beneficiary and without demand or notice, shall immediately become due and payable. It is expressly acknowledged and agreed that any transfer of more than ten percent (10%) of the capital stock, partnership or member interests of Grantor, as the case may be, shall constitute a transfer of the entire Trust Estate within the meaning of this Section 8.10.

8.11 Evidence of Title. Grantor shall deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

8.12 Additional Collateral. If, at any time, the value of all of the Trust Estate, based on an appraisal acceptable to Beneficiary, is not sufficient to establish a ratio between the total amount of the Obligations then due and owing and the value of all of the Trust Estate equal to or less than eighty percent

(80%), Grantor shall provide Beneficiary with such additional collateral as is necessary so that the total value of all collateral securing Grantor's performance of the Obligations is sufficient to establish a ratio between the total amount of the Obligations then due and owing and the value of all such collateral of no less than eighty percent (80%).

8.13 Compliance With Laws. Grantor shall comply with all laws, ordinances, regulations, easement agreements, covenants, conditions, and restrictions (including laws relating to hazardous wastes and/or protection of the environment, or species of plants or animals protected by federal, state, local or other law) affecting the Trust Estate. Grantor shall not cause, permit nor suffer any violation of any of the foregoing and shall pay all response costs, fees, or charges of any kind in connection therewith and defend, indemnify, and hold harmless Beneficiary with respect thereto.

8.14 Financial Statements. Grantor shall keep adequate books and records of account of the Trust Estate and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Beneficiary shall have the right to examine, copy and audit Grantor's records and books of account at all reasonable times. Grantor shall furnish to Beneficiary copies of its financial statements and other financial information satisfactory to Beneficiary at the time and in the manner provided in the Loan Agreement.

8.15 Inspections. Beneficiary, and its agents, representatives and employees, are authorized, but not obligated, to enter at any reasonable time upon the Real Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Grantor is authorized to perform under the terms of this Trust Deed or any other Loan Document.

8.16 No Merger. If the Trust Estate is under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Trust Deed and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Trust Deed on the Trust Estate pursuant to the provisions of this Trust Deed, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

ARTICLE 9 CONDEMNATION AWARDS

If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled to receive for application against the indebtedness secured hereby or other application as provided in this Article 9, all compensation, awards, and other payments or relief therefor, and shall be entitled at Beneficiary's option to commence, appear in, and prosecute in Beneficiary's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Grantor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvement. All such compensation, awards, damages, causes of action, proceeds, or other payments are hereby assigned to Beneficiary, which may, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, incurred by Beneficiary in connection with such compensation, awards, damages, rights of action, proceeds, or other payments, release any and all moneys so received by Beneficiary or apply the same, or any portion thereof, on any of the Obligations (whether or not then due) secured by this Trust Deed unless (i) Grantor provides evidence reasonably satisfactory to Beneficiary in its sole discretion that the Improvements, less the condemned property, is still materially viable and valuable for the purposes originally contemplated under the Loan and fully collateralizes the Loan to the same extent as prior to the condemnation, and (ii) any cash necessary to repair or amend the Improvements has been contributed by Grantor, Beneficiary shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Trust Estate if, in Beneficiary's

reasonable judgment, such taking has a significant adverse impact on the operation of the remaining portion of the Trust Estate. Grantor shall execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Beneficiary may from time to time require.

ARTICLE 10 ASSIGNMENT OF LEASES, RENTS AND INCOME

10.1 Assignment. Grantor hereby absolutely assigns to Trustee all right, title and interest of Grantor in and to all leases now existing or hereafter entered into by Grantor and demising the whole or any part of the Trust Estate, and does hereby further assign any and all rents, subrents, room rents and other amounts received for the use of any rooms in the Trust Estate, including the Improvements, and any and all room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such room rents, covering the Trust Estate or any portion thereof, now or hereafter existing or entered into, together with issues, royalties, income, profits and security deposits of and from the Trust Estate. Until the occurrence of an Event of Default, Grantor may, under a temporary revocable license granted hereby, collect and use all such rents, subrents, room rents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default, Grantor's license to collect and use any of such proceeds shall immediately cease without further action by or on behalf of any party, and Beneficiary shall have the right, with or without taking possession of the Trust Estate, and either in person, by agent, or through a court appointed receiver (Grantor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such rents, subrents, room rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Trust Deed, the foreclosure of this Trust Deed and throughout any period of redemption. The rights granted under this Section 10.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Trust Estate is in danger of being lost, removed, or materially injured, or whether the Trust Estate or any other security is adequate to discharge the obligations secured by this Trust Deed. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Neither any provision contained herein, nor the Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, sublease, option, or other interest in the Trust Estate, or an assumption of liability under, or a subordination of the lien or charge of this Trust Deed to, any tenancy, lease, sublease, option, or other interest in the Trust Estate. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Grantor in connection with the Trust Estate or any portion thereof are hereby authorized and directed to pay the rents, subrents, room rents, issues, royalties, income, and profits payable by them with respect to the Trust Estate, or any part thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such rents, subrents, room rents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by the Trustee.

10.2 Application of Payments. If at any time during the term of this Trust Deed Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Trust Deed and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, notwithstanding any instructions which may be given by Grantor, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Grantor or to Beneficiary consistent with the terms of the Note.

10.3 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Trust Estate or any portion of the Trust Estate or the collection of rents, subrents, room rents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any

taking or damaging of the Trust Estate, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in any of the Obligations secured by this Trust Deed unless and until the Obligations are paid in full.

10.4 Indemnification. Grantor shall indemnify, pay, protect, defend and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs, and fees (including reasonable attorney fees) arising from or related to receipt by Beneficiary of the rents, subrents, room rents, issues, royalties, income and profit from the Trust Estate or any portion of the Trust Estate, except those liabilities arising from Beneficiary's own negligence and willful misconduct.

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

11.1 Event of Default. Fifteen (15) days after written notice from Beneficiary to Grantor for monetary defaults and thirty (30) days after written notice from Beneficiary to Grantor for non-monetary defaults, if such defaults are not cured within such fifteen (15) day or thirty (30) day periods, respectively, each of the following shall constitute an event of default under this Trust Deed (an "*Event of Default*"):

11.1.1 Failure to Make Payment. If Grantor shall fail to make any payment due and payable under the terms of the Note, this Trust Deed, or any other Loan Document.

11.1.2 Non-Monetary Default. Except as provided otherwise in Section 11.1.1 of this Trust Deed, Grantor's failure to observe and perform any of the terms, covenants, or conditions to be observed or performed in the Note, this Trust Deed or any other Loan Document.

11.1.3 Loan Agreement. Any Event of Default occurs under the Loan Agreement.

11.1.4 False Warranty. Any material representation or warranty of Grantor contained in the Note, this Trust Deed or any other Loan Document was untrue when made.

11.1.5 Insolvency, Etc. If (a) Grantor commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Grantor or Grantor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for Grantor or for all or any substantial part of Grantor's property; (b) any guarantor of the Note commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of such guarantor or such guarantor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for such guarantor or for any substantial part of such guarantor's property; or (c) any such case, proceeding, or other action is commenced against either Grantor or any guarantor of the Note.

11.1.6 Failure to Pay Debts. Grantor fails to pay Grantor's debts as they become due, admits in writing Grantor's inability to pay Grantor's debts, or makes a general assignment for the benefit of creditors.

11.1.7 Failure to Perform Other Obligations. A default by Grantor under the terms of any other promissory note, deed of trust, security agreement, undertaking or arrangement between Grantor and Beneficiary now existing or entered into hereafter.

11.1.8 Cross Default. A default by Grantor under any other agreement or arrangement between the parties to the Loan Agreement now existing or entered into hereafter.

11.2 Acceleration; Notice. Time is of the essence hereof. Upon the occurrence of any Event of Default under this Trust Deed, at Beneficiary's option and in addition to any other remedy Beneficiary may have under the Note, Beneficiary may declare all sums secured hereby immediately due and payable and elect to have the Trust Estate sold in the manner provided herein, but in all cases, consistent with the Oregon Trust Deed Act, currently ORS Sections 86.705-86.795, which governs the foreclosure of this Trust Deed by advertisement and sale. In the event Beneficiary elects to sell the Trust Estate, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Trust Estate to be sold to

satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Trust Estate is located. Beneficiary shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Trust Deed.

11.3 Exercise of Power of Sale. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Grantor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient and in accordance with applicable law, postpone the sale from time to time for periods that total not more than 180 days from the original sale date, until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary but excluding Trustee, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees and costs; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the rate then provided for in the Note; (d) all sums then secured by this Trust Deed, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, and the surplus, if any, to the Trustee or to its successor in interest entitled to such surplus.

11.4 Surrender of Possession. Grantor shall surrender possession of the Trust Estate to the purchaser immediately after the sale of the Trust Estate as provided in Section 11.3 of this Trust Deed, in the event such possession has not previously been surrendered by Grantor.

11.5 UCC Remedies. Notwithstanding anything to the contrary in Sections 11.3 and 11.4 of this Trust Deed, Beneficiary, with regard to all Personalty, including fixtures, chattels, equipment, inventory, and personal property, conveyed to Trustee under Section 1.2 of this Trust Deed, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Oregon Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Grantor shall, at Grantor's expense, assemble such fixtures, chattels, equipment, inventory, and personal property and make them available to Beneficiary at a reasonably convenient place designated by Beneficiary. Beneficiary shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of the Personalty and records relating to the Personalty. Beneficiary may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out-of-pocket expenses incurred by Beneficiary, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Personalty, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Personalty, and (g) costs for preservation and protection of the Personalty, apply the remainder to pay, or to hold as a reserve against, the Obligations.

11.6 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

11.7 Receiver. If an Event of Default occurs, Beneficiary, as a matter of right and without regard to the interest of Grantor therein, shall have the right upon notice to Grantor to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate and Grantor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver

and shall continue as such and exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

11.8 No Remedy Exclusive. No remedy conferred upon or reserved to Beneficiary under this Trust Deed shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Deed or any other Loan Document, or now or hereafter existing at law or in equity or by statute.

11.9 Rights upon Default. In making the Loan, Beneficiary has relied upon the rights available to Beneficiary under this Trust Deed upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Trust Deed, to sell the Property encumbered by this Trust Deed pursuant to the power of sale granted hereunder, the right to foreclose this Trust Deed as a mortgage, and the right to have a receiver appointed.

ARTICLE 12 GENERAL PROVISIONS

12.1 Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Beneficiary:	Crestmark Bank 5480 Corporate Drive, Suite 350 Troy, MI 48098 Attn: Stacey Farmer
Grantor:	Cypress Creek Land Holdings 2, LLC 3250 Ocean Park Blvd., Suite 355 Santa Monica, CA 90405
Trustee:	AmeriTitle, Inc. 300 Klamath Ave. Klamath Falls, OR 97601

Such addresses may be changed by notice to the other party given in the same manner provided in this Section 12.1.

12.2 Severability. If any provision of this Trust Deed shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Trust Deed or render the same invalid, inoperative, or unenforceable to any extent whatever.

12.3 Amendments, Changes, and Modifications. This Trust Deed may not be amended, changed, modified, altered, or terminated without the written consent of Beneficiary.

12.4 Governing Law. This Trust Deed shall be governed exclusively by and construed in accordance with the applicable laws of the State of Oregon.

12.5 Jurisdiction. Grantor acknowledges that by execution and delivery of this Trust Deed, Grantor has transacted business in the State of Oregon and Grantor hereby voluntarily submits to, consents to, and waives any defense to the jurisdiction of courts located in the State of Oregon as to all matters relating to or arising from this Trust Deed.

12.6 Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Trust Deed are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

12.7 Binding Effect. This Trust Deed shall be binding upon Grantor and Grantor's successors and assigns. This Trust Deed shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby.

12.8 Waivers. No delay or failure to exercise any right or power accruing upon any Event of Default, including Beneficiary requiring strict performance by Grantor of any undertakings, agreements, or covenants contained in this Trust Deed, shall impair any such right or power or shall be construed to be a waiver thereof, including the right to demand strict compliance and performance, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any waiver by Beneficiary of any Event of Default under this Trust Deed shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Grantor under this Trust Deed, shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Grantor specifying such waiver.

12.9 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county wherein the Property is located, a substitution of trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

12.10 Acceptance of Trust. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

12.11 Attorneys' Fees and Expenses. Except as expressly provided otherwise herein or by law, the parties shall each pay their own attorneys' fees and costs incurred in connection with this transaction. With respect to any dispute relating to this Trust Deed, or in the event that a suit, action, arbitration, or other proceeding or review of any nature whatsoever, including (without limitation), any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action seeking a declaration of rights or an action for rescission, is instituted to interpret or enforce this Trust Deed or any provision of this Trust Deed, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants' and other experts' and professional fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. As used in this Trust Deed, the "**prevailing party**" shall be that party in whose favor the balance of the issues was decided. In making the determination of who is the prevailing party, the parties agree that an award of money damages shall be one factor in the judge's, arbitrator's or other authority's decision but shall not be the only factor. Other factors for the judge, arbitrator or other authority to consider shall include, but not be limited to, the number, size and importance of claims asserted by the party in whose favor a monetary award was made but on which the party did not prevail, the size of any monetary award in relation to the amount requested and the resolution of non-monetary issues. For purposes of this Trust Deed, the term attorney fees includes all charges of the prevailing party's attorneys and their staff (including without limitation legal assistants, paralegals, word processing, and other support personnel) and any postpetition fees in a bankruptcy court. For purposes of this Trust Deed, the term fees and expenses includes but is not limited to long distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; and costs incurred in searching records.

12.12 Request for Notice. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Grantor at the address for Grantor specified in Section 12.1 of this Trust Deed.

12.13 Limitation on Damages. Beneficiary and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Grantor or any guarantor for consequential, special, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Trust Deed or the Trust Estate regardless of whether Beneficiary may have been advised of the possibility of such damages.

12.14 Preferential Transfers. If the incurring of any debt by Grantor or the payment of any money or transfer of property to Beneficiary by or on behalf of Grantor or guarantor should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "*voidable transfers*"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary's counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys' fees of Beneficiary related thereto, the liability of Grantor and guarantor, and each of them, and this Trust Deed, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

12.15 Survival. All agreements, representations, warranties and covenants made by Grantor shall survive the execution and delivery of this Trust Deed, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Beneficiary contemplated by this Trust Deed is outstanding and unpaid, notwithstanding any termination of this Trust Deed. All agreements, representations, warranties and covenants in this Trust Deed shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED TO BE ENFORCEABLE.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS SECTION 30.930, IN ALL ZONES.

WARNING (ORS 93.090): BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW THE USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS

92.010 OR 215.010, TO VERIFY THE APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.


This Trust Deed is a commercial trust deed and is not a residential trust deed, as the phrase “residential trust deed” is defined in ORS Section 86.705, and the provisions of ORS Sections 86.705 through 86.795 applicable to the foreclosure of commercial trust deeds shall apply to this Trust Deed at the option of Beneficiary. Grantor warrants that the loans secured hereby are for commercial purposes and is not for residential, household, personal or consumer purposes. Grantor warrants that the Trust Estate is used by Grantor exclusively for business and commercial purposes.

***[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]***

DATED: June __, 2018.

GRANTOR

CYPRESS CREEK LAND HOLDINGS 2, LLC

By: 
Name: Jonathan Butters
Its: Authorized Person

[NOTARY BLOCK]

STATE OF _____)
: ss.
COUNTY OF _____)

See attached.

The foregoing instrument was acknowledged before me this ____ day of June __, 2018, by _____, an Authorized Person of Cypress Creek Land Holdings 2, LLC, a Delaware limited liability company.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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 Los Angeles)

On June 4, 2018 before me, Avita D. Hinduja, Notary Public
(insert name and title of the officer)

personally appeared Jonathan Buttles
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  (Seal)

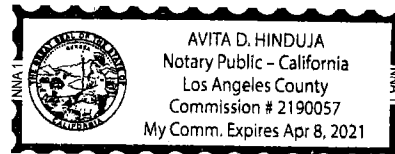


EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Klamath County, State of Oregon, and more particularly described as follows:

Parcel A:

Parcel 2 of Land Partition 48-06, located in the S1/2 and the S1/2 N1/2 of Section 1, and the SE1/4 NE 1/4 and NE1/4 SE1/4 of Section 2 and the N1/2, and N1/2 SE1/4 and NE1/4 SW1/4 of Section 12, Township 39 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel B:

Easement 1 as dedicated and described on Land Partition 48-06, recorded as Instrument 2006-22243, Klamath County Official Records.

Parcel C:

Easement 2 as dedicated and described on Land Partition 48-06, recorded as Instrument 2006-22243, Klamath County Official Records.

EXHIBIT B

PERMITTED ENCUMBRANCES

The encumbrances identified in the loan policy of title insurance (Policy No. 236213AM) issued by Stewart Title Guaranty Company, covering the Mortgagee.