FA- 1640637-TO

2018-010195
Klamath County, Oregon
08/24/2018 10:09:08 AM
Fee: $152.00

This instrument prepared by and after recording return to:
Bryan Phillips
U.S. Bank National Association
Collateral Department
P.O. Box 5308
Portland, OR 97228-5308

AMENDED AND RESTATED OREGON TRUST DEED, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

This Trust Deed, Security Agreement and Assignment of Rents and Leases (the "**Deed of Trust**") is made and entered into by Kern Building, LLC (the "**Grantor**", whether one or more) in favor of U.S. Bank Trust Company, National Association, having a mailing address at 555 SW Oak, Portland, OR 97204 (the "**Trustee**"), for the benefit of U.S. Bank National Association (the "**Beneficiary**"), as of the date set forth below.

The date on which the Note matures or the term of the Note expires, exclusive of any option to renew or extend such term or maturity, is April 15, 2023.

This document amends and restates in its entirety the following described Deed of Trust to or for the benefit of Beneficiary identified above or its predecessor in interest, as amended, supplemented and otherwise modified to date:

Date of Deed of Trust: November 22, 2010
Existing Grantor of record: Kern Building, LLC
Recording Office: County Clerk
County of Recording: Klamath County, Oregon
Date of Recording: December 20, 2010
Document/Instrument No.: 2010014406, or in Book _____, Page _____

This document is not intended to, and does not, novate the above described Deed of Trust. Unless terminated or released in a writing signed by Beneficiary, all agreements and documents, whenever created, related to the above described Deed of Trust, the collateral thereunder or the transactions secured by the above described Deed of Trust, shall continue in full force and effect as amended, restated or otherwise modified, whether or not such agreements and documents are identified in this document. Any and all references to the above described Deed of Trust in any agreement or document are hereby amended to refer to this document.

ARTICLE I. CONVEYANCE/MORTGAGED PROPERTY

1.1 Grant of Deed of Trust/Security Interest. IN CONSIDERATION OF FIVE DOLLARS ($5.00) cash in hand paid by Trustee to Grantor, and the financial accommodations from Beneficiary to Grantor as described below, Grantor does hereby GRANT, BARGAIN AND SELL, MORTGAGE, WARRANT, CONVEY AND CONFIRM, ASSIGN, TRANSFER AND SET OVER unto Trustee, its successors and assigns, IN TRUST, forever, for the benefit of Beneficiary, the Mortgaged Property (defined below) to secure all of the Obligations (defined below). The intent of the parties hereto is that the Mortgaged Property secures all of the Obligations, whether now or

hereafter existing. The parties further intend that the Deed of Trust shall operate as a security agreement with respect to those portions of the Mortgaged Property which are subject to Article 9 of the Uniform Commercial Code.

1.2 "Mortgaged Property" means all of the following, whether now owned or existing or hereafter acquired by Grantor, wherever located: all the real property legally described in **Exhibit A** attached hereto (the **"Land"**), together with all buildings, structures, standing timber, timber to be cut, fixtures, furnishings, equipment, machinery, apparatus, appliances, and articles of personal property of every kind and nature whatsoever (and all proceeds and products thereof) now or hereafter located on the Land, or any part thereof, used in connection with the Land and improvements; all building materials, contracts, drawings, plans and specifications and other personal property relating to any construction on the Land; and all other improvements now or hereafter constructed, affixed or located thereon (the **"Improvements"**) (the Land and the Improvements collectively the **"Premises"**); TOGETHER with any and all easements, rights-of-way, licenses, privileges, and appurtenances thereto, and any and all leases or other agreements for the use or occupancy of the Premises, and all the rents, issues, profits or any proceeds therefrom and all security deposits and any guaranty of a tenant's obligations thereunder (collectively the **"Rents"**); all awards as a result of condemnation, eminent domain or other decrease in value of the Premises and all insurance and other proceeds of the Premises; and any and all rights of Grantor in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Mortgaged Property, including, without limitation, income and profits derived from the sale of the Mortgaged Property or the operation of any business on the Premises or attributable to services that occur or are provided on the Premises or generated from the use and operation of the Mortgaged Property.

Real Property Tax Identification Number: 413966

1.3 "Obligations" means the loan(s) by Beneficiary to Kern Building, LLC (the **"Borrower"**) evidenced by a note or notes originally dated or amended or restated as of August 15, 2018, in the stated or amended principal amount(s) of $505,382.07, and any extensions, renewals, restatements and modifications thereof and all principal, interest, fees and expenses relating thereto (the **"Note"**); all of Grantor's debts, liabilities, obligations, covenants, warranties, and duties to Beneficiary under the Loan Documents, however arising and whether now or hereafter existing or incurred, whether liquidated or unliquidated and whether absolute or contingent; all of Grantor's obligations under the Deed of Trust; and principal, interest, fees, expenses and charges relating to any of the foregoing, including, without limitation, costs and expenses of collection and enforcement of the Deed of Trust, attorneys' fees of both inside and outside counsel and environmental assessment or remediation costs. The interest rate and maturity of such Obligations are as described in the documents creating the indebtedness secured hereby.

1.4 "Loan Documents" means together and individually the Note, the Deed of Trust and any loan agreement, security or pledge agreement, assignment, financing statement, lease, mortgage, deed of trust or other pledge of an interest in real or personal property, any guaranty, subordination, letter of credit and letter of credit reimbursement agreement, banker's acceptance, and any other agreement, document or instrument previously, concurrently or hereafter executed or delivered by any party to or in favor of Beneficiary evidencing, creating, securing, guarantying or otherwise related to the indebtedness evidenced by the Note or the pledge of the Mortgaged Property as security for repayment of the indebtedness evidenced by the Note, whether or not specifically enumerated herein.

1.5 Homestead. The Premises are not the homestead of Grantor. If so, Grantor releases and waives all rights under and by virtue of the homestead exemption laws of the State of Oregon.

ARTICLE II. WARRANTIES AND COVENANTS

In addition to all other warranties and covenants of Grantor under the Loan Documents which are expressly incorporated herein as part of the Deed of Trust, including the covenants to pay and perform all Obligations, and while any part of the credit granted Grantor under the Loan Documents is available or any Obligations of Grantor to Beneficiary are unpaid or outstanding, Grantor continuously warrants to Beneficiary and Trustee and agrees as follows:

2.1 Warranty of Title/Possession. Grantor has sole and exclusive title to and possession of the Premises, excepting only the following **"Permitted Encumbrances"**: restrictions and utility easements of record, and zoning ordinances (the terms of which are and will be complied with, and in the case of easements, are and will be kept free of encroachments), taxes and assessments not yet due and payable and those Permitted Encumbrances set forth on **Exhibit B** attached hereto (except that if no Exhibit B is attached, there will be no additional Permitted Encumbrances). The lien of the Deed of Trust, subject only to Permitted Encumbrances, is and will continue to be a valid first and only lien upon all of the Mortgaged Property.

2.2 Maintenance; Waste; Alteration. Grantor will maintain the Premises in good and tenantable condition and will restore or replace damaged or destroyed Improvements with items of at least equal utility and value. Grantor

will not commit or permit waste to be committed on the Premises. Grantor will not remove, demolish or materially alter any part of the Premises without Beneficiary's prior written consent, except Grantor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility. The replacement fixture will be subject to the priority lien and security interest of the Deed of Trust.

2.3 Transfer and Liens. Grantor will not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole and absolute discretion, either voluntarily or involuntarily (a) sell, assign, lease or transfer, or permit to be sold, assigned, leased or transferred, any part of the Premises, or any interest therein; or (b) pledge or otherwise encumber, create or permit to exist any mortgage, deed of trust, pledge, lien or claim for lien or encumbrance upon any part of the Premises or interest therein, except for the Permitted Encumbrances. Beneficiary has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of the Deed of Trust.

2.4 Escrow. After written request from Beneficiary, Grantor shall pay to Beneficiary funds in such amounts and at such times as Beneficiary designates to pay when due (a) annual real estate taxes and assessments on the Premises; (b) all property or hazard insurance premiums on the Premises; and (c) flood insurance premiums, if any, on the Premises. Such payments shall be in addition to any other amounts which may be payable hereunder or under any other Loan Document, and the amount of such payments shall be based upon Beneficiary's estimate, in Beneficiary's sole discretion, of such charges. Upon demand by Beneficiary, Grantor shall pay to Beneficiary such additional sums as may be required by Beneficiary to make up any deficiency in the amount necessary to enable Beneficiary to fully pay when due the actual amount of any of such charges. Interest will not be paid by Beneficiary on any escrowed funds unless otherwise required by law. Escrowed funds may be commingled with other funds of Beneficiary. All escrowed funds are hereby pledged as additional security for the Obligations.

2.5 Taxes, Assessments and Charges. To the extent not paid to Beneficiary under Section 2.4 above, Grantor will pay before they become delinquent all taxes, assessments, fines and other charges now or hereafter levied or assessed against the Premises, against Beneficiary based upon the Deed of Trust or the Obligations secured by the Deed of Trust, or upon Beneficiary's interest in the Premises, and will deliver to Beneficiary receipts showing timely payment.

2.6 Insurance. Grantor will continually insure the Premises, with insurers acceptable to Beneficiary, against such perils or hazards as Beneficiary may require, in amounts not less than the unpaid balance of the Obligations or the full replacement value of the Improvements, whichever is less, with acceptable co-insurance provisions. The policies will contain an agreement by each insurer that the policy will not be terminated or modified without at least thirty (30) days' prior written notice to Beneficiary and will contain a mortgage clause acceptable to Beneficiary; and Grantor will take such other action as Beneficiary may reasonably request to ensure that Beneficiary will receive (subject to no other interests) the insurance proceeds from the Improvements. Grantor hereby assigns all insurance proceeds to and irrevocably directs, while any Obligations remain unpaid, any insurer to pay to Beneficiary the proceeds of all such insurance and any premium refund; and authorizes Beneficiary to endorse Grantor's name to effect the same, to make, adjust or settle, in Grantor's name, any claim on any insurance policy relating to the Premises. The proceeds and refunds will be applied in such manner as Beneficiary, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

2.7 Condemnation. Any compensation received or receivable for the taking of the Premises, or any part thereof, by a condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received or receivable as damages for injury to the Premises, or any part thereof, shall be applied in such manner as Beneficiary, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable. Grantor hereby assigns to Trustee, for the benefit of Beneficiary, any claims for compensation for and shall pay to Trustee, for the benefit of Beneficiary, all proceeds received from a taking by eminent domain of all or a part of the Mortgaged Property.

2.8 Environmental Matters. Except as specifically disclosed by Grantor to Beneficiary in writing prior to the execution of the Deed of Trust, Grantor represents and warrants as follows. There exists no uncorrected violation by Grantor of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined, whether such laws currently exist or are enacted in the future (collectively "**Environmental Laws**"). The term "**Hazardous Substances**" will mean any hazardous or toxic wastes, chemicals or other substances, the generation, possession or existence of which is prohibited or governed by any Environmental Laws. Grantor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding, which asserts that Grantor (a) has violated any Environmental Laws; (b) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "**Remedial Action**"); or (c) is required to pay all or a portion of

the cost of any Remedial Action, as a potentially responsible party. Except as disclosed on Grantor's environmental questionnaire or audit provided to Beneficiary, there are not now, nor to Grantor's knowledge after reasonable investigation have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at any real estate owned or occupied by Grantor during the periods that Grantor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action. To Grantor's knowledge, there are no proposed or pending changes in Environmental Laws which would adversely affect Grantor or its business, and there are no conditions existing currently or likely to exist while the Loan Documents are in effect which would subject Grantor to Remedial Action or other liability. Grantor currently complies with and will continue to timely comply with all applicable Environmental Laws; and will provide Beneficiary, immediately upon receipt, copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by Grantor or Remedial Action or other response by or on the part of Grantor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from Grantor for an alleged violation of Environmental Laws. In the event of any such circumstance or condition or in the event of a default, Grantor agrees, at its expense and at the request of Beneficiary, to permit such environmental audits and/or investigations, which may at Bank's option include invasive environmental testing, solely for the benefit of Beneficiary, to be conducted by Beneficiary or an independent agent selected by Beneficiary and which may not be relied on by Grantor for any purpose. This provision shall not relieve Grantor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws or to take Remedial Action at its own expense.

2.9 Assignments. Grantor will not assign, in whole or in part, without Beneficiary's prior written consent, the rents, issues or profits arising from the Premises.

2.10 Right of Inspection. Beneficiary or its agent may at all reasonable times enter and inspect the Premises.

2.11 Waivers by Grantor. To the greatest extent that such rights may then be lawfully waived, Grantor hereby agrees for itself and any persons claiming by, through or under Grantor that it will waive and will not, at any time, insist upon or plead or in any manner whatsoever claim or take any benefit or advantage of (a) any exemption, stay, extension or moratorium law now or at any time hereafter in force; (b) any law now or hereafter in force providing for the valuation or appraisement of the Premises or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained or pursuant to the decree, judgment or order of any court of competent jurisdiction; (c) any statute of limitations now or at any time hereafter in force; (d) any right to require marshalling of assets by Beneficiary; or (e) to the extent permitted by law, any law now or at any time hereafter made or enacted granting a right to redeem from foreclosure or any other rights of redemption in connection with foreclosure of, or exercise of any power of sale under, the Deed of Trust.

2.12 Assignment of Rents and Leases. Grantor assigns and transfers to Beneficiary, as additional security for the Obligations, all right, title and interest of Grantor in and to all leases which now exist or hereafter may be executed by or on behalf of Grantor covering the Premises and any extensions or renewals thereof, together with all Rents. Grantor may collect the Rents and manage the Premises, but only if and so long as a default has not occurred. If a default occurs, the right of Grantor to collect the Rents and to manage the Premises shall thereupon automatically terminate and such right, together with other rights, powers and authorizations contained herein, shall belong exclusively to Beneficiary. This assignment confers upon Beneficiary a power coupled with an interest and cannot be revoked by Grantor. Upon the occurrence of a default, Beneficiary, at its option without notice and without seeking or obtaining the appointment of a receiver or taking actual possession of the Premises may (a) give notice to any tenant(s) that the tenant(s) should begin making payments under their lease agreement(s) directly to Beneficiary or its designee; (b) commence a foreclosure action and file a motion for appointment of a receiver; or (c) give notice to Grantor that Grantor should collect all Rents arising from the Premises and remit them to Beneficiary upon collection and that Grantor should enforce the terms of the lease(s) to ensure prompt payment by tenant(s) under the lease(s). All Rents received by Grantor shall be held in trust by Grantor for Beneficiary. All such payments received by Beneficiary may be applied in any manner as Beneficiary determines to payments required under the Deed of Trust, the Loan Documents and the Obligations. Grantor agrees to hold each tenant harmless from actions relating to tenant's payment of Rents to Beneficiary.

2.13 Fixture Filing. From the date of its recording, the Deed of Trust shall be effective as a financing statement filed as a fixture filing under the Uniform Commercial Code with respect to the Improvements and for this purpose the name and address of the debtor is the name and address of Grantor as set forth in the Deed of Trust and the name and address of the secured party is the name and address of Beneficiary as set forth in the Deed of Trust. The Mortgaged Property includes goods which are or may become so affixed to real property as to become fixtures.

2.14 Compliance with Leases. Grantor will comply with all terms, covenants and conditions of any lease(s) affecting the Premises. Grantor will not accept any prepayment of rent for more than one month in advance, without the prior written consent of Beneficiary.

ARTICLE III. RIGHTS AND DUTIES OF BENEFICIARY

In addition to all other rights (including setoff) and duties of Beneficiary under the Loan Documents which are expressly incorporated herein as a part of the Deed of Trust, the following provisions will also apply:

3.1 Beneficiary Authorized to Perform for Grantor. If Grantor fails to perform any of Grantor's duties or covenants set forth in the Deed of Trust, Beneficiary may perform the duties or cause them to be performed, including without limitation signing Grantor's name or paying any amount so required, and the cost, with interest at the default rate set forth in the Loan Documents, will immediately be due from Grantor to Beneficiary from the date of expenditure by Beneficiary to date of payment by Grantor, and will be one of the Obligations secured by the Deed of Trust. All acts by Beneficiary are hereby ratified and approved, and Beneficiary will not be liable for any acts of commission or omission, nor for any errors of judgment or mistakes of fact or law.

ARTICLE IV. DEFAULTS AND REMEDIES

Beneficiary may enforce its rights and remedies under the Deed of Trust upon default. The following shall each constitute a default under the Deed of Trust: (A) Grantor (i) fails to comply with the terms of the Deed of Trust or any other Loan Document to which Grantor is a party, (ii) fails to comply with or defaults on any other mortgage or trust deed affecting the Land or (iii) dies, ceases to exist or becomes the subject of incompetency, bankruptcy or insolvency proceedings; (B) a default occurs under any other Loan Document or under any Obligation; (C) a demand for payment is made under any demand loan secured by the Deed of Trust; or (D) any other obligor fails to comply with the terms of any Loan Documents for which Grantor has given Beneficiary a guaranty or pledge, or if any other default occurs under the Loan Documents. Upon the occurrence of a default, without limitation of Beneficiary's other remedies, Beneficiary may declare the Obligations to be immediately due and payable.

4.1 Remedies. In addition to the remedies for default set forth below and in the other Loan Documents, including acceleration, Beneficiary upon default will have all other rights and remedies for default available by law or equity. Upon a default, Beneficiary may exercise the following remedies:

(a) **Enforcement of Assignment of Rents and Leases.** Beneficiary may:

(i) terminate the license granted to Grantor to collect the Rents (regardless of whether Beneficiary or Trustee shall have entered into possession of the Mortgaged Property), collect and sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to any Obligations as Beneficiary may elect;

(ii) make, modify, enforce, cancel or accept surrender of any leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary reasonably deems advisable in connection with the Mortgaged Property;

(iii) apply the Rents so collected to the operation and management of the Mortgaged Property, including the payment of reasonable management, brokerage and attorneys' fees, or to the Obligations; and

(iv) require Grantor to transfer and deliver possession of all security deposits and records thereof to Beneficiary.

(b) **Power of Sale.** Beneficiary may require Trustee, and Trustee is hereby authorized and empowered, to enter and take possession of the Premises and to sell all or part of the Mortgaged Property, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Mortgaged Property to be sold, by advertising the sale of the property as required by the statutes of Oregon. Trustee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple. Trustee shall receive the proceeds thereof and shall apply the same as follows: (a) first, the payment of the expenses of making, maintaining and executing this trust, protection of the Mortgaged Property, including the expense of any litigation and reasonable attorneys' fees of Trustee and Beneficiary, other costs specified herein, and reasonable compensation to Trustee; (b) second, to any advancements made

by Trustee or Beneficiary pursuant hereto, with interest thereon; (c) third, to the payment of the Obligations herein secured or intended so to be, in such order as Beneficiary shall elect, and any balance of said Obligations may be the subject of immediate suit; (d) and, fourth, should there by any surplus, Trustee will pay it to Grantor, or to such person as may be legally entitled thereto. The sale or sales by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Premises shall be less than the aggregate of the Obligations and the expenses thereof, the Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property. Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any such sale, and the amount of Beneficiary's successful bid may be credited on the Obligations.

(c) **Judicial and Other Relief.** Beneficiary or Trustee may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction. In the event that the Deed of Trust shall be foreclosed by judicial process, then to the fullest extent permitted by law, Beneficiary shall be entitled to a deficiency judgment if the proceeds of such foreclosure shall be insufficient to pay all of the Obligations and allowed costs and expenses.

(d) **Entry on Premises.** Beneficiary may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Grantor, and all persons claiming under Grantor, and its agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Grantor in the name, place and stead of Grantor, or otherwise, as Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(e) **Receiver.** Beneficiary may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, for appointment of a receiver of the Mortgaged Property, and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all necessary and proper powers and duties of receivers in similar cases, including without limitation the full power (i) to rent, maintain and otherwise operate the Mortgaged Property, and (ii) to take other action permitted by law, all upon such terms as may be approved by the court.

(f) **Remedies Cumulative, Concurrent and Nonexclusive.** If the Obligations are now or hereafter further secured by chattel mortgages, other deeds of trust, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Beneficiary may, at its option, exhaust its remedies under any one or more of said instruments and the Deed of Trust, either concurrently or independently, and in such order as Beneficiary may determine. To the fullest extent permitted by applicable law, same (a) shall be cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Grantor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Beneficiary, and (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse.

(g) **Waiver by Beneficiary.** Beneficiary may permit Grantor to attempt to remedy any default without waiving its rights and remedies hereunder, and Beneficiary may waive any default without waiving any other subsequent or prior default by Grantor. Furthermore, delay on the part of Beneficiary in exercising any right, power or privilege hereunder or at law will not operate as a waiver thereof, nor will any single or partial exercise of such right, power or privilege preclude other exercise thereof or the exercise of any other right, power or privilege. No waiver or suspension will be deemed to have occurred unless Beneficiary has expressly agreed in writing specifying such waiver or suspension.

(h) **Uniform Commercial Code.** Beneficiary shall have all additional rights and remedies as provided under the Uniform Commercial Code, as amended and as applicable.

ARTICLE V. TRUSTEE

5.1 Action by Trustee. Trustee named herein shall be clothed with full power to act when action hereunder shall be required, and to execute any conveyance of the Mortgaged Property. In the event that the substitution of Trustee shall become necessary for any reason, the substitution of a trustee in the place of that named herein shall be sufficient. The term "Trustee" shall be construed to mean "Trustees" whenever the sense requires. The necessity of Trustee herein named, or any successor in trust, making oath or giving bond, is expressly waived.

5.2 Employment of Agents. Trustee, or any one acting in its stead, shall have, in its discretion, authority to employ all property agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Mortgaged Property, should any be realized; and if no sale be made or if the proceeds of sale be insufficient to pay the same, then Grantor hereby undertakes and agrees to pay the cost of such services rendered to said Trustee. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

5.3 Indemnification of Trustee. If Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Property or the title thereto, or the interest of Trustee or Beneficiary under the Deed of Trust, Trustee and Beneficiary shall be reimbursed by Grantor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by them or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Mortgaged Property.

5.4 Trustee and Successor Trustee. Beneficiary may at any time, including any time before, during or after the commencement or completion of any foreclosure proceeding, remove Trustee (with or without cause) and appoint a successor Trustee by an instrument executed, acknowledged and recorded in the real estate records, which recording may take place before, during or after the commencement or completion of any foreclosure proceeding, and any such successor Trustee shall thereupon succeed to Trustee as Trustee hereunder as if named herein. No defect in the removal of Trustee or in the appointment of a successor or in the execution and recording of such appointment shall affect the validity thereof. Additionally, whether the recording of the successor Trustee instrument takes place before, during or after the commencement or completion of any foreclosure proceeding shall have no effect upon the validity of said proceeding. Trustee shall not be disqualified by reason that Trustee is an officer, employee or stockholder of Beneficiary, or has an interest in the Obligations. All parties waive any objection to Trustee having any such interest. Trustee shall be liable only for gross negligence or willful misconduct. No indemnity or remedy herein conferred is exclusive of any other remedy or indemnity, but each shall be in addition to every other hereunder and at law or in equity. No delay or omission by Trustee or Beneficiary to exercise any right or power shall impair such right or power or be construed as a waiver of any default or an acquiescence therein. If Trustee shall have proceeded to enforce any right by foreclosure, entry or otherwise, and such proceedings are discontinued for any reason, or shall have been determined adversely, then Grantor and Trustee shall severally and respectively be restored to their former positions and rights hereunder.

ARTICLE VI. ADDITIONAL TERMS

The warranties, covenants, conditions and other terms described in this Section are incorporated into the Deed of Trust.

6.1 Compliance with Laws & Restrictions. All existing Improvements and any Improvements hereafter placed on the Land are and will be located within the boundary lines of the Land. All appurtenant easement areas are and shall remain free from encroachments. The Mortgaged Property complies with, and will continue to comply with, all laws applicable to the Mortgaged Property, including without limitation all applicable building, zoning, subdivision and land use statutes, ordinances, codes, rules, regulations and orders and all covenants and agreements of record. Grantor will not, and will not permit any tenant or other occupant of the Mortgaged Property to, use the Mortgaged Property in any manner that violates any state or federal law. No further permits, licenses, approvals, variances, public hearings or governmental orders or consents are necessary for the operation of the Mortgaged Property for its intended purposes or for the construction of any planned Improvements.

6.2 Accuracy of Information. All information, certificates or statements given to Beneficiary by or on behalf of Grantor in connection with or pursuant to any of the Loan Documents or the loan facility evidenced thereby will be true and complete when given.

ARTICLE VII. MISCELLANEOUS

In addition to all other miscellaneous provisions under the Loan Documents which are expressly incorporated as a part of the Deed of Trust, the following provisions will also apply:

7.1 Term of Deed of Trust. The Deed of Trust shall continue in full force and effect until the Deed of Trust is released. If Grantor shall pay to Beneficiary the Obligations as and when the same shall become due and the Deed of Trust is no longer intended to secure future advances or future obligations, then the Mortgaged Property shall be released at the cost of Grantor.

7.2 Time of the Essence. Time is of the essence with respect to payment of the Obligations, the performance of all covenants of Grantor and the payment of taxes, assessments, and similar charges and insurance premiums.

7.3 Subrogation. Beneficiary will be subrogated to the lien of any deed of trust, mortgage or other lien discharged, in whole or in part, by the proceeds of the Note or other advances by Beneficiary, in which event any sums otherwise advanced by Beneficiary shall be immediately due and payable, with interest at the default rate set forth in the Loan Documents from the date of advance by Beneficiary to the date of payment by Grantor, and will be one of the Obligations secured by the Deed of Trust.

7.4 Choice of Law. Creation, perfection, priority, enforcement and foreclosure of the Deed of Trust and the liens and remedies hereunder will be governed by the laws of the state in which the Mortgaged Property is located. For all other purposes, the choice of law specified in the Loan Documents will govern.

7.5 Severability. Invalidity or unenforceability of any provision of the Deed of Trust shall not affect the validity or enforceability of any other provision.

7.6 Copies; Entire Agreement; Modification; Demand Obligations. Grantor hereby acknowledges the receipt of a copy of the Deed of Trust, together with a copy of each promissory note secured hereby, and all other documents executed by Grantor in connection herewith. The Deed of Trust is intended by Grantor and Beneficiary as a final expression of the Deed of Trust and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of the Deed of Trust. No parol evidence of any nature shall be used to supplement or modify any terms.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS DEED OF TRUST SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS DEED OF TRUST MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER LOAN DOCUMENTS NOW IN EFFECT BETWEEN GRANTOR AND BENEFICIARY. A MODIFICATION OF ANY LOAN DOCUMENT NOW IN EFFECT BETWEEN GRANTOR AND BENEFICIARY, WHICH OCCURS AFTER RECEIPT BY GRANTOR OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO SUCH LOAN DOCUMENTS ARE NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

IN THE EVENT ANY OF THE OBLIGATIONS SECURED HEREBY IS PAYABLE UPON DEMAND, NEITHER THE DEED OF TRUST NOR ANYTHING CONTAINED HEREIN SHALL BE DEEMED TO ALTER, LIMIT, OR OTHERWISE IMPINGE UPON THE DEMAND CHARACTER OF SUCH OBLIGATIONS.

7.7 Joint Liability; Successors and Assigns. If there is more than one Grantor, the liability of Grantors will be joint and several, and the reference to "Grantor" shall be deemed to refer to each Grantor and to all Grantors. The rights, options, powers and remedies granted in the Deed of Trust and the other Loan Documents shall extend to Beneficiary and to its successors and assigns, shall be binding upon Grantor and its successors and assigns, and shall be applicable hereto and to all renewals, amendments and/or extensions hereof.

7.8 Indemnification. Except for harm arising from Beneficiary's or Trustee's willful misconduct, Grantor hereby indemnifies and agrees to defend and hold Beneficiary and Trustee harmless from any and all losses, costs, damages, claims and expenses (including, without limitation, attorneys' fees and expenses) of any kind suffered by or asserted against Beneficiary or Trustee relating to claims by third parties arising out of the financing provided under the Loan Documents or related to the Mortgaged Property (including, without limitation, Beneficiary's failure to perform its obligations relating to Environmental Matters described in Section 2.8 above) or the exercise by Beneficiary or Trustee of any of their respective powers, rights and remedies under the Deed of Trust. This

indemnification and hold harmless provision will survive the termination of the Loan Documents and the satisfaction of the Deed of Trust and Obligations due Beneficiary.

7.9 Notices. Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail, postage pre-paid, (b) received by overnight delivery service, (c) received by telex, (d) received by telecopy, (e) received through the internet, or (f) when personally delivered.

7.10 Expenses and Attorneys' Fees. To the extent permitted by applicable law and in addition to those costs and expenses payable under the Loan Documents, all costs, receiver, trustee and attorneys' fees and other disbursements (including, without limitation, costs of procuring title commitments, title insurance, title searches, appraisals, environmental tests, reports and audits) incurred in connection with the preparation, administration, execution, defense, collection (pre and post judgment) and foreclosure of the Deed of Trust, whether incurred before or after commencement of litigation or at trial, on appeal or in any other proceeding, may be recovered by Beneficiary and included in any sale made hereunder or by judgment of foreclosure.

7.11 Release of Rights of Dower, Homestead and Distributive Share. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property, will not avail itself of any appraisement, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws", existing or hereafter enacted, to hinder the enforcement or foreclosure of the Deed of Trust, and hereby waives the benefit of such laws.

7.12 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, GRANTOR AND BENEFICIARY HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE LOAN DOCUMENTS, THE DEED OF TRUST, THE OBLIGATIONS THEREUNDER, THE MORTGAGED PROPERTY OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. GRANTOR AND BENEFICIARY EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

7.13 Attachments. All documents attached hereto, including any appendices, schedules, riders, and exhibits to the Deed of Trust, are hereby expressly incorporated by reference.

IN WITNESS WHEREOF, the undersigned has/have executed the Deed of Trust on the date shown in the notarial acknowledgment, effective as of August 15, 2018.

GRANTOR:

Kern Building, LLC
a/an **Oregon Limited Liability Company**

By: _____
Name and Title: **Richard F Bogatay, Manager**

GRANTOR ADDRESS: 455 Hanks St, Klamath Falls, OR 97601

BENEFICIARY ADDRESS: 555 SW Oak, Portland, OR 97204

OFFICIAL STAMP
LE KATHERINE GRAHAM
ARY PUBLIC - OREGON
MMISSION NO. 965554
ION EXPIRES AUGUST 16, 2021

STATE OF Oregon)
) ss.
COUNTY OF Klamath)

This instrument was acknowledged before me on August 21, 2018, by **Richard F Bogatay**, as **Manager** of **Kern Building, LLC**, and that, as such officer, being authorized so to do, executed this instrument for the purposes therein contained.

(Notarial Seal)

Jenelle Graham
Printed Name: Jenelle Graham
Title (and Rank): Universal Banker
My commission expires: August 16, 2021

OFFICIAL STAMP
JENELLE KATHERINE GRAHAM
NOTARY PUBLIC - OREGON
COMMISSION NO. 965554
MY COMMISSION EXPIRES AUGUST 16, 2021

Acknowledgment and Agreement Regarding Amended and Restated Deed of Trust

For valuable consideration, the undersigned Beneficiary hereby acknowledges the Amended and Restated Deed of Trust to which this Acknowledgment and Agreement is attached; agrees that the Amended and Restated Deed of Trust constitutes an amendment in its entirety of the existing Deed of Trust identified therein, as amended, supplemented and otherwise modified to date (the "**Existing Deed of Trust**"); and directs the Trustee of the Amended and Restated Deed of Trust to accept delivery of the Amended and Restated Deed of Trust as an amendment of the Existing Deed of Trust.

Dated effective as of August 15, 2018.

BENEFICIARY:

U.S. Bank National Association

By: _____
Name and Title: Bryan Phillips, Assistant Vice President

STATE OF Oregon)
) ss.
COUNTY OF Klamath)

This instrument was acknowledged before me on August 21, 2018, by **Bryan Phillips**, as **Assistant Vice President** of **U.S. Bank National Association**, and that, as such officer, being authorized so to do, executed this instrument for the purposes therein contained.

(Notarial Seal)

_____
Printed Name: Jenelle Graham
Title (and Rank): Universal Banker
My commission expires: August 16, 2021

OFFICIAL STAMP
JENELLE KATHERINE GRAHAM
NOTARY PUBLIC - OREGON
COMMISSION NO. 965554
MY COMMISSION EXPIRES AUGUST 16, 2021

EXHIBIT A TO DEED OF TRUST
(Legal Description)

Grantor: Kern Building, LLC

Trustee: U.S. Bank Trust Company, National Association

Beneficiary: U.S. Bank National Association

Legal Description of Land:

A tract of land situated in Lot 3 and Lot 4, Block 38 Linkville, now City of Klamath Falls, Oregon, more particularly described as follows:

Beginning at the most Southerly corner of said Lot 4; thence North 50°55' West along the Southwesterly line of said Lot 4 a distance of 81.20 feet to the Northwesterly face of a party wall; thence North 39°12'36" East along the Northwesterly face of said party wall a distance of 90.50 feet; thence North 50°55' West a distance of 39.00 feet to a one-half inch iron pin on the Northwesterly line of said Lot 3; thence North 39°05' East a distance of 39.75 feet to the most Northerly corner of said Lot 3; thence South 50°55' East a distance of 120.00 feet to the most Easterly corner of said Lot 3; thence South 39°05' West a distance of 130.25 feet to the point of beginning.

Also known as: 125 South 6th Street, Klamath Falls, Oregon