

**2018-015216**

**Klamath County, Oregon**

**12/21/2018 08:54:01 AM**

**Fee: \$262.00**

**WHEN RECORDED MAIL TO:**

AKIN GUMP STRAUSS HAUER & FELD LLP  
1999 Avenue of the Stars, Suite 600  
Los Angeles, CA 90067-6022  
Attn: Daniel Lynch

**Re: Bly Solar Center, LLC**

Location: North ½ of Section 11, Township 37 South,  
Range 14 East  
County: Klamath  
State: Oregon

Space above this line for recorder's use only

**LEASEHOLD MORTGAGE WITH POWER OF SALE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT**

This LEASEHOLD MORTGAGE WITH POWER OF SALE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT, made as of December 20, 2018 (this "Mortgage"), is by BLY SOLAR CENTER, LLC (together with its successors and assigns, "Mortgagor"), an Oregon limited liability company having the address 12667 Alcosta Boulevard, Suite 400, San Ramon, CA 94583 to PNC ENERGY CAPITAL LLC ("Mortgagee"), a Delaware limited liability company having offices at 995 Dalton Avenue, Cincinnati, OH 45203.

**WITNESSETH:**

WHEREAS, Mortgagor and Mortgagee are parties to (i) that certain Master Purchase and Sale Agreement, dated November 16, 2017 (as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "Master Purchase Agreement"), (ii) that certain Master Lease Agreement, dated November 16, 2017 (as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "Master Lease Agreement"), (iii), that certain Bill of Sale, dated of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "Bill of Sale") (iv) that certain Lease, dated of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, the "Lease") and (v) certain other agreements entered into with respect to a sale-leaseback transaction between the Mortgagor and Mortgagee, pursuant to which Mortgagee purchased certain solar photovoltaic energy system equipment (the "Equipment") from the Mortgagor pursuant to the terms of the Bill of Sale and Master Purchase Agreement, and the Mortgagor immediately leased the Equipment back from Mortgagee pursuant to the terms of the Lease and Master Lease Agreement (collectively, as more fully set forth in, and as defined in, the Master Purchase Agreement, the "Lease Documents");

WHEREAS, pursuant to the Lease Documents, Mortgagor is obligated to execute and deliver this Mortgage for the benefit of Mortgagee; and

WHEREAS, Mortgagor and Mortgagee acknowledge that this Mortgage incorporates by reference certain definitions and provisions of the Lease Documents which are not fully set forth herein.

NOW, THEREFORE, with reference to the foregoing Recitals, and for ten dollars cash in hand and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby:

### **GRANTING CLAUSE**

Mortgagor does hereby irrevocably deed, mortgage, grant, bargain, sell, convey, confirm, pledge, grant a security interest in, set over, warrant, assign and transfer to Mortgagee and Mortgagee's successors and assigns, for itself and its successors and assigns, WITH MORTGAGE COVENANTS AND WITH STATUTORY POWER OF SALE AND RIGHT TO ENTRY AND POSSESSION (to the extent permitted under applicable law), pursuant to this Mortgage and applicable law, all right, title and interest of Mortgagor in the following property, whether now owned or hereafter acquired by Mortgagor, for the purpose of securing the payment and performance of the Secured Indebtedness (as hereinafter defined):

ALL of the property, rights, title, interest, privileges and franchises of Mortgagor as lessee under that certain Solar Energy Site Lease, dated as September 30, 2016, by and between David and Theresa E. Cowan ("Ground Lessor") and Mortgagor (the "Ground Lease"), a notice of which is recorded with the Official Records of Klamath County, Instrument Number 2017-001225, which is hereby made a part of, and deemed to be described in this Granting Clause as fully as if set forth in this Granting Clause at length, which Ground Lease concerns the real property more particularly described in Exhibit A and located in Klamath County, Oregon (the "Real Property") and in and to any and all modifications, extensions and renewals of the Ground Lease and all options set forth therein, together with (i) all credits, deposits, privileges and rights of Mortgagor as lessee and grantee, as applicable, under the Ground Lease, now or at any time existing, (ii) the leasehold and the leasehold estate created by the Ground Lease and (iii) all of the estates, rights, titles, claims or demands whatsoever of Mortgagor, either in law or in equity, in possession or in expectancy, of, in and to the Ground Lease and the Real Property, together with (x) any and all other, further or additional title, estates, interests or rights which may at any time be acquired by Mortgagor in or to the Real Property, and Mortgagor expressly agrees that if Mortgagor shall, at any time prior to payment in full of all indebtedness secured hereby, acquire fee simple title or any other greater estate to the Real Property pursuant to the Ground Lease, or otherwise, the lien of this Mortgage shall attach, extend to, cover and be a lien upon such fee simple title or other greater estate and thereupon the lien of this Mortgage shall be prior to the lien of any mortgage or deed of trust placed on such acquired title, estate, interest or right subsequent to the date of this Mortgage (except as otherwise provided herein), and (y) any right to possession or statutory term of years derived from, or incident to, the Ground Lease pursuant to Section 365(h) of the U.S. Bankruptcy Code or any comparable provision contained in any present or future federal, state, local, foreign or other statute, law, rule or regulation (collectively, the "Ground Lease Interest");

TOGETHER WITH all estate, right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any and all buildings and other improvements now or hereafter located on the Real Property and all building materials and building equipment now or hereafter delivered to and intended to be installed in or on the Real Property and other improvements now or hereafter attached to or placed, erected, constructed or developed on the Real Property or attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereon (all of the foregoing estate, right, title and interest being hereinafter collectively called the "Improvements");

TOGETHER WITH all estate, right, title and interest of Mortgagor in and to all such tangible property now owned or hereafter acquired by Mortgagor (including, without limitation, all machinery, apparatus, equipment, fixtures, furnishings, inventory, fittings and articles of personal property) and now or hereafter located on or at or attached, installed in, or used in or about the Real Property or Improvements or which are necessary or useful for the complete and comfortable use and occupancy of the Project, Real Property or Improvements for the purposes for which they were or are to be attached, placed, erected, constructed or developed, or which personal property is or may be used in the development of the Project or Improvements, and all renewals of or replacements or substitutions for any of the foregoing, whether or not the same shall be attached to the Real Property or Improvements, and any and all products and accessions to any such property which may exist at any time (all of the foregoing estate, right, title and interest, and products and accessions, being hereinafter called "Fixtures");

TOGETHER WITH all interests, estates and other claims, both in law and in equity, that Mortgagor now has or may hereafter acquire in (a) the Real Property; (b) the Easement Lands (as defined in the Ground Lease); (c) all other easements, rights of way and rights used in connection with the Real Property, the Improvements or the Project; and (d) all tenements, hereditaments and appurtenances in any manner belonging, relating or appertaining thereto (all of the foregoing interests, estates and other claims being hereinafter collectively called "Easements and Rights of Way");

TOGETHER WITH all estates, right, power, privilege, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any streets, open or proposed, public or private, adjoining the Real Property, and any and all sidewalks, railroad tracks or rights of way, alleys and strips and gores of land adjacent to or used in connection therewith (all of the foregoing estate, right, title and interest being hereinafter called "Adjacent Rights");

TOGETHER WITH all estate, right, title and interest of Mortgagor in and rights, royalties, minerals, oil and gas, and other hydrocarbon substances (to the extent permitted under applicable law), water and water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant), on or in the Real Property and water stock, timber, and crops (all of the foregoing estate, right, title and interest being hereinafter collectively called "Minerals and Related Rights");

TOGETHER WITH Mortgagor's right, title and interest in all monetary deposits which Mortgagor has been required to give to any public or private utility with respect to utility

services furnished to the Project, Real Property or Improvements (being hereinafter collectively called "Monetary Deposits");

TOGETHER WITH Mortgagor's right, title and interest in all rents, revenues, proceeds, issues, profits, royalties, income or other benefits of the Project, Real Property, Improvements, or Fixtures, including, without limitation, cash or securities deposited pursuant to leases or Use Agreements (as hereinafter defined) arising or issuing from all insurance policies, sale agreements, licenses, options and all other agreements regarding use, sale, transfer or occupancy now or hereafter entered into by Mortgagor covering all or any part of the Project, Real Property, Improvements or Fixtures. Mortgagor will execute and deliver to Mortgagee, on demand, such separate, specific assignments and instruments as Mortgagee may reasonably require to implement, confirm, maintain and continue the assignment hereunder of all or any part of the Project, Real Property, Improvements or Fixtures; subject to the right, power and authority hereinafter given to Mortgagor to collect and apply the same (all of the foregoing rents, revenues, proceeds, issues, profits, royalties, income and other benefits being hereinafter collectively called "Rents and Royalties"). Mortgagor hereby appoints Mortgagee, its designees and nominees, as Mortgagor's agents and attorneys-in-fact, coupled with an interest, to collect such Rents and Royalties after the occurrence and during the continuance of an Event of Default;

TOGETHER WITH all estate, right, title and interest and other claim or demand that Mortgagor now has or may hereafter acquire with respect to any damage to the Project, Real Property, Improvements or Fixtures and any and all proceeds of insurance (including premium refunds) in effect with respect to the Project, Real Property, Improvements or Fixtures, and any and all proceeds from the taking of the Project, Real Property, Improvements, Fixtures, personal property or any part thereof or any interest or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, including without limitation, any awards resulting from a change of grade of streets or as the result of any other damage to the Project, Real Property, Improvements or Fixtures for which compensation shall be given by any Governmental Authority (all of the foregoing estate, right, title and interest and other claims or demand, and any such proceeds or awards, being hereinafter collectively, called "Damage Rights"). Mortgagor hereby appoints Mortgagee, its designees and nominees, as Mortgagor's agents and attorneys-in-fact to collect any such Damage Rights after the occurrence and during the continuance of an Event of Default;

TOGETHER WITH all permits, agreements, licenses, franchises, certificates and other rights and privileges obtained by Mortgagor in connection with the Project, Real Property, Improvements or Fixtures (being hereinafter collectively called "Permits and Licenses");

TOGETHER WITH all estate, right, title and interest that Mortgagor now has or may hereafter acquire with respect to any and all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Project, Real Property or Improvements (being hereinafter collectively called "Construction Rights");

TOGETHER WITH all estate, right, title and interest of Mortgagor in respect of any and all air rights, development rights or credits, zoning rights or other similar rights or interests

which benefit or are appurtenant to the Project, Real Property or the Improvements (all of the foregoing estate, right, title and interest being hereinafter collectively called "Air and Development Rights");

TOGETHER WITH all rights (but not, to the extent permitted under applicable law, obligations) of Mortgagor under all contracts, agreements, consents and other rights and privileges entered into, used or obtained in connection with the Project, Real Property, Improvements or Fixtures or the management, possession, operation, protection and preservation thereof or of the Project, including all procurement, transportation and interconnection agreements relating to the use or operation thereof as a solar energy production facility (collectively, the "Contract Rights");

TOGETHER WITH all estate, right, title and interest of Mortgagor in respect of any and all rights and appurtenances belonging, incident or appertaining to the Project, Real Property or the Improvements (all of the foregoing estate, right, title and interest being hereinafter collectively called "Appurtenances");

TOGETHER WITH all other estates, easements, interests, licenses, tenements, hereditaments, rights, titles, powers or privileges of every kind and character which Mortgagor now has, or at any time hereafter acquires, including replacements or substitutions therefor, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor (collectively, "Other Estates and Interests");

All of the foregoing Ground Lease, Ground Lease Interest, Real Property, Improvements, Fixtures, Easements and Rights of Way, Adjacent Rights, Minerals and Related Rights, Monetary Deposits, Rents and Royalties, Damage Rights, Permits and Licenses, Construction Rights, Air and Development Rights, Contract Rights, Appurtenances, and Other Estates and Interests, now owned or hereinafter acquired, being sometimes hereinafter referred to collectively as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and Mortgagee's successors, substitutes or assigns, and to its or their successors, substitutes and assigns, and for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject only to Permitted Liens, and subject further to the power of sale (to the extent permitted under applicable law), upon the terms, provisions and conditions herein set forth, to secure and enforce the payment and performance of the Secured Indebtedness, and Mortgagor, for Mortgagor and Mortgagor's successors, hereby agrees to warrant and forever defend, all and singular, the Mortgaged Property unto Mortgagee and Mortgagee's successors or substitutes in this trust against the claim or claims of all persons claiming or to claim the same or any part thereof, subject, however, to Permitted Liens as aforesaid.

MOREOVER, in order to secure the payment of the Secured Indebtedness and the performance of the obligations, covenants, agreements and undertakings hereinafter described, Mortgagor hereby grants Mortgagee a security interest in all of the Mortgaged Property to the

greatest extent in which such a security interest may be granted therein under applicable law, including, without limitation, Mortgagor's interest in all Improvements, Fixtures, and all other goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Mortgagor now or hereafter acquired and located or used in and about the building or buildings or other improvements now erected or hereafter to be erected by or on behalf of Mortgagor on the Real Property, or otherwise hereafter acquired and located on the Real Property, and all accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter acquired and delivered to said Real Property and intended to be installed therein, all security deposits (whether cash, one or more letters of credit, bonds or other forms of security) and advance rentals under lease agreements or Use Agreements now or at any time hereafter covering or affecting any of the Mortgaged Property and held by or for the benefit of Mortgagor, all monetary deposits which Mortgagor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Property, all rents and other amounts from and under leases, easements or Use Agreements of all or any part of the Mortgaged Property, all issues, profits and proceeds from all or any part of the Collateral (as hereinafter defined), all proceeds (including premium refunds) of each policy of insurance relating to the Collateral, all proceeds from the taking of the Collateral or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all amounts deposited in escrow for the payment of ad valorem taxes, assessments and charges and/or premiums for policies of insurance with respect to the Collateral, all contracts related to the Collateral, all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), all notes or chattel paper arising from or related to the Collateral, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Collateral, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Mortgaged Property, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Mortgaged Property (all of the property described in this paragraph hereinafter collectively called the "UCC Collateral" and, collectively with the Mortgaged Property, the "Collateral").

Notwithstanding the foregoing, any Collateral, other than the Project Documents (as defined in the Master Lease Agreement), and that, by its terms or by operation of law, would become void, voidable, terminable or revocable or in respect of which Mortgagor would be deemed to be in breach or default thereunder if encumbered, pledged or assigned hereunder or if a security interest therein were granted hereunder are expressly excepted and excluded from the Collateral and the lien and terms of this Mortgage to the extent necessary to avoid such voidness, voidability, terminability, revocability, breach or default; provided, however, to the extent such condition no longer exists such item will be automatically included in the Collateral.

This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements on the part of Mortgagor herein undertaken shall be kept and fully and timely performed, and upon the occurrence of an Event of Default, in

addition to its other rights and remedies hereunder or under applicable law, Mortgagee shall have the STATUTORY POWER OF SALE.

## **ARTICLE I.**

### **SECURED INDEBTEDNESS**

#### **1.1     Secured Indebtedness.**

This Mortgage is made to secure and enforce the payment and performance by Mortgagor of all obligations required to be paid or performed by it under this Mortgage, the Master Purchase Agreement, the Master Lease Agreement, the Bill of Sale, the Lease or any other Lease Documents (all such obligations, whether outstanding on the date of this Mortgage or extended from time to time after the date of this Mortgage, being herein called the "Secured Indebtedness" or the "indebtedness secured hereby").

#### **1.2     Future Indebtedness.**

This Mortgage shall secure not only existing Secured Indebtedness, but also such future advances in connection with the Lease Documents, if any, as may be made by Mortgagee to the same extent as if such future advances were made on the date of the execution of this Mortgage. Any such future advances are intended to and shall have priority from the date this Mortgage is recorded.

#### **1.3     Certain Terms.**

This Mortgage, the Master Lease Agreement, the Lease, the Bill of Sale, the other Lease Documents and certain other documents were executed and delivered pursuant to the Master Purchase Agreement. Capitalized terms used herein, but not otherwise defined in this Mortgage are defined in the Master Purchase Agreement or the Master Lease Agreement and shall have the meanings given such terms in the Master Purchase Agreement or the Master Lease Agreement, as applicable.

## **ARTICLE II.**

### **NO HOMESTEAD; RIGHT OF MORTGAGEE**

#### **2.1     No Homestead.**

No portion of the Mortgaged Property is being used as Mortgagor's residential homestead.

#### **2.2     Right of Mortgagee to Perform.**

Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which hereunder Mortgagor is required to perform or take, or to pay any money which hereunder Mortgagor is required to pay, or takes any action prohibited hereby, and any such failure is not cured within any applicable notice and cure period, Mortgagee shall have such rights with respect to the Project and/or the Secured Indebtedness as are set forth in the Lease Documents.

### 2.3 Absence of Obligations of Mortgagee with Respect to the Collateral.

Notwithstanding anything in this Mortgage to the contrary: (a) to the extent permitted by applicable law, the Collateral is composed of Mortgagor's rights, title and interests therein, but not Mortgagor's obligations, duties or liabilities pertaining thereto, (b) as to Mortgagor, Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Collateral" herein, prior to obtaining title to such Collateral, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (c) as to Mortgagor, Mortgagee may, at any time prior to the acquisition of title to any portion of the Collateral as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Collateral or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that, as to Mortgagor, Mortgagee shall have no obligations, duties or liabilities prior to acquisition of title to any portion of the Collateral, as lessee under any lease, grantee under any easement, Permitted User (as hereinafter defined) under any Use Agreement, or purchaser or seller under any contract or option, unless Mortgagee elects otherwise by written notification.

## **ARTICLE III. ASSIGNMENT OF RENTS**

### 3.1 Assignment.

(i) In consideration of the Secured Indebtedness and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby absolutely and unconditionally collaterally assign, transfer and set over to Mortgagee all of the rents, income, receipts, revenues, issues, profits and other sums of money (hereinafter collectively called the "Rent") that are now and/or at any time hereafter become due and payable to Mortgagor under the terms of any written or oral agreements made between Mortgagor and any other party (herein, "Permitted User") to use all or any part of the Mortgaged Property ("Use Agreement"), or arising or issuing from or out of the Use Agreements or from or out of the Mortgaged Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits (whether cash, one or more letters of credit, bonds or other forms of security), advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Mortgaged Property and other Collateral, and all of Mortgagor's rights to recover monetary amounts from any Permitted User in bankruptcy including rights of recovery for use and occupancy and damage claims arising out of defaults under any Use Agreement, including, without limitation, rejections, under any applicable bankruptcy law, including specifically the immediate and continuing right to collect and receive each and all of the foregoing and any and all guaranties of payment of the Rent. This assignment is intended to be specific, perfected and choate upon the recording of this Mortgage. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Use Agreement or otherwise impose any obligation upon Mortgagee.



(ii) Except after the occurrence and during the continuance of an Event of Default, Mortgagor is granted a license to collect and retain all Rents; provided, however, Mortgagee may terminate such license immediately after the occurrence and during the continuance of an Event of Default.

(iii) Upon receipt from Mortgagee of a notice of an Event of Default and during the continuance of such Event of Default, each Permitted User under a Use Agreement is hereby authorized and directed to pay directly to Mortgagee all Rent thereafter accruing, and the receipt of Rent by Mortgagee shall be a release of such Permitted User to the extent of all amounts so paid. The receipt by a Permitted User under a Use Agreement of a notice of an Event of Default shall be sufficient authorization for such Permitted User to make all future payments of Rent directly to Mortgagee, and each such Permitted User shall be entitled to rely on such notice of an Event of Default without any obligation to inquire as to the accuracy of such notice, and shall have no liability to Mortgagor for any Rent paid to Mortgagee after receipt of such notice of an Event of Default. Rent so received by Mortgagee for any period prior to foreclosure under this Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Mortgagee to the payment (in such order as Mortgagee shall determine, but consistent with the Lease Documents) of: (i) the portion of the Secured Indebtedness attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver; (ii) all other Secured Indebtedness in any order and proportion as Mortgagee in its sole discretion may choose (but consistent with the Lease Documents); and (iii) to remit the remainder, if any, to the person or persons entitled to it. In no event will the assignment pursuant to this Section reduce the indebtedness secured hereby except to the extent, if any, that Rent is actually received by Mortgagee and applied upon or after said receipt to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Mortgagee may, at its option, at any time and from time to time, release to Mortgagor Rent so received by Mortgagee or any part thereof. As between Mortgagor and Mortgagee, and any person claiming through or under Mortgagor, other than any Permitted User under the Use Agreements who has not received a notice of an Event of Default, the assignment contained in this Section is intended to be absolute, unconditional and presently effective and the provisions of this Section for notification of the Permitted User under the Use Agreements after the occurrence and during the continuance of an Event of Default are intended solely for the benefit of each such Permitted User and shall never inure to the benefit of Mortgagor or any person claiming through or under Mortgagor, other than a Permitted User who has not received such notice. Mortgagor shall not require Mortgagee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section against Mortgagor, unless required by applicable law. At any time during which Mortgagor is receiving Rent directly from the Permitted User under the Use Agreements, Mortgagor shall, upon receipt of written direction from Mortgagee after the occurrence and during the continuance of an Event of Default, make demand and/or sue for all Rent due and payable under one or more Use Agreements, as directed by Mortgagee, as it becomes due and payable, including Rent which is past due and unpaid. In the event Mortgagor fails to take such action, or at any time during which Mortgagor is not receiving Rent directly from the Permitted User under the Use Agreement, Mortgagee shall have the right (but shall be under no duty) to demand,

collect and sue for, in its own name or in the name of Mortgagor, all Rent due and payable under the Use Agreement, as it becomes due and payable, including Rent which is past due and unpaid. Mortgagee shall not be deemed by Mortgagor to have taken possession of the Collateral except on the exercise of its option to do so, evidenced by its demand and overt act for such purpose. Except as permitted by the Lease Documents: (a) Mortgagor shall make no assignment or other disposition of a Use Agreement or the Rent, nor shall Mortgagor cancel or amend, in any material respect or in any manner adverse to the interests of Mortgagee any Use Agreement or any other instrument under which Rent is to be paid, or waive, excuse, condone, discount, set off, compromise or in any manner release any obligation thereunder; (b) Mortgagor shall duly and punctually observe and perform in all material respects every obligation to be performed by it under each Use Agreement (including maintaining all security deposits in accordance with applicable law) and shall not do or permit to be done anything to impair the security thereof in any material respect; and (c) Mortgagor shall enforce, to the extent such enforcement would be reasonably prudent under the circumstances, every material obligation of each other party thereto. The assignment contained in this Section 3.1 shall terminate upon the release of this Mortgage, but no Permitted User under the Use Agreements shall be required to take notice of such termination until a copy of a release of this Mortgage shall have been delivered to such Permitted User.

(iv) After the occurrence and during the continuance of an Event of Default, Mortgagor may, at Mortgagee's written direction, be the agent for Mortgagee in collection of the Rent and all of the Rent so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee. In such event, Mortgagor shall, within ten (10) Business Days after receipt of any such Rent, pay the same to Mortgagee to be applied by Mortgagee as provided herein. Neither demand for nor collection of Rent by Mortgagee shall constitute any assumption by Mortgagee of any obligations under any Use Agreement or agreement relating thereto.

- (v) This Mortgage is intended to constitute a notice of assignment of rents or profits under ORS 93.806.

### 3.2 Mortgagor Responsibility.

Mortgagee shall not, by reason of the above assignment of rents or the exercise of its rights or remedies hereunder, (a) be obligated by Mortgagor to perform or discharge, or be liable or responsible to Mortgagor for, any obligation, duty or liability of Mortgagor under the Use Agreements; or (b) be liable to Mortgagor for any failure to let the Mortgaged Property, or any part thereof, or any failure to collect, or any failure to exercise diligence in collecting, Rent under the Use Agreements; or (c) be accountable or liable or responsible to Mortgagor for Rent or security deposits or any other amount under or arising out of the Use Agreements except for that actually received by Mortgagee; or (d) be obligated to Mortgagor to take any action under, or to incur any expense, with respect to the Collateral; or (e) be obligated to Mortgagor to appear in or defend any action or proceeding relating to the Collateral; or (f) be, or be construed by Mortgagor to be, prior to actual entry and taking possession of the Mortgaged Property by Mortgagee or its agents or representatives, a mortgagee in possession of the Mortgaged Property

or any part thereof; or (g) be liable to Mortgagor in any way for any injury or damage to person or property sustained by any person in or about the Mortgaged Property other than such injury or damage that results from Mortgagee's gross negligence or willful misconduct; or (h) be responsible or liable to Mortgagor for the control, care, management or repair of the Collateral or any waste committed on the Mortgaged Property by any Permitted User, tenants or any other parties or for any dangerous or defective condition of, the Collateral, or for any negligence, other than gross negligence or willful misconduct, in the management, upkeep, repair or control of the Collateral resulting in loss, injury or death to any Mortgagor, Permitted Users, tenant, licensee, employee, or other third party.

#### **ARTICLE IV. REMEDIES IN EVENT OF DEFAULT**

##### **4.1     Defaults.**

The term "Event of Default" as used in this Mortgage shall have the same meaning as the term "Default" in Section 19 of the Master Lease Agreement.

##### **4.2     Acceleration; Remedies.**

After the occurrence and during the continuance of an Event of Default, Mortgagee shall be entitled to all remedies for default provided herein, under the Lease Documents or provided by applicable law, and Mortgagee, without written notice to Mortgagor except to the extent required by the Lease Documents or by applicable law, may, but shall have no obligation, duty or liability to, pursue any such remedies.

##### **4.3     Possession.**

Subject to applicable law, after the occurrence and during the continuance of an Event of Default, Mortgagee is authorized prior or subsequent to the institution of any foreclosure proceedings to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Collateral and of all books, records and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to rent the same for the account of Mortgagor and to deduct from such rents all documented costs, expenses and liabilities of every character reasonably incurred by Mortgagee in collecting such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such rents on the indebtedness secured hereby in such manner as Mortgagee may elect, consistent with the Lease Documents. All such documented costs, expenses and liabilities reasonably incurred by Mortgagee in collecting such rents and in managing, operating, maintaining, protecting or preserving the Collateral, if not paid out of rents as hereinabove provided, shall constitute a portion of the Secured Indebtedness. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions in ejectment, for forcible entry and detainer, to quiet title, trespass to try title and restitution to the extent available under applicable law. IN CONNECTION WITH ANY ACTION TAKEN BY MORTGAGEE PURSUANT TO THIS SECTION 4.3, MORTGAGEE SHALL NOT BE LIABLE FOR ANY

LOSS SUSTAINED BY MORTGAGOR RESULTING FROM ANY FAILURE TO LET THE MORTGAGED PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF MORTGAGEE IN MANAGING THE MORTGAGED PROPERTY (INCLUDING WITHOUT LIMITATION, ANY SUCH LOSS CAUSED BY THE NEGLIGENCE OF MORTGAGEE) UNLESS SUCH LOSS IS CAUSED BY THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR BAD FAITH OF MORTGAGEE, NOR SHALL MORTGAGEE BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY USE AGREEMENT COVERING THE MORTGAGED PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS MORTGAGE OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE AND ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES AND AGENTS FOR, AND TO HOLD MORTGAGEE AND ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE INCURRED BY MORTGAGEE OR ANY OF ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES OR AGENTS UNDER ANY SUCH USE AGREEMENT OR UNDER OR BY REASON OF THIS MORTGAGE OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS ASSERTED BY ANY THIRD PARTY AGAINST MORTGAGEE OR ANY OF ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES OR AGENTS BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH USE AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH LIABILITY, LOSS, DAMAGE OR CLAIMS RESULTING FROM THE NEGLIGENCE OF MORTGAGEE OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO MORTGAGEE TO THE EXTENT THAT ANY SUCH LIABILITY, LOSS, DAMAGE OR CLAIMS ARE (I) CAUSED BY OR ARISE OUT OF THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BAD FAITH OF MORTGAGEE OR ANY OF ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES OR AGENTS OR (II) OTHERWISE SPECIFICALLY LIMITED BY THE TERMS OF THE LEASE DOCUMENTS. Should Mortgagee or any of its directors, officers, partners, employees or agents incur any such liability, the actual amount thereof, including reasonable documented costs, expenses and reasonable attorney's fees, shall be part of the indebtedness secured hereby. Nothing in this Section 4.3 shall impose any duty, obligation or responsibility upon Mortgagee for the control, care, management or repair of the Collateral, nor for the carrying out of any of the terms and conditions of any such Use Agreement; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by any Permitted User or by any other parties or for any dangerous or defective condition of the Collateral, OR FOR ANY NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE) IN THE MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE MORTGAGED PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERMITTED USER, TENANT, LICENSEE, EMPLOYEE OR OTHER THIRD PARTY OR ANY STRICT LIABILITY, EXCEPT TO THE EXTENT RESULTING FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BAD FAITH OF MORTGAGEE OR ANY OF ITS DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES OR AGENTS. Mortgagor hereby assents to, ratifies and confirms any and all lawful actions of Mortgagee with respect to the Collateral taken under this Section 4.3 and in compliance with the terms of the Lease

Documents or the Project Documents, but not otherwise acting with gross negligence or willful misconduct or in bad faith.

#### 4.4 Power of Sale.

If an Event of Default has occurred and is continuing, Mortgagee, its successors and assigns, may elect, subject to and in accordance with applicable law, to cause the Mortgaged Property or any part thereof to be sold as follows:

(i) Mortgagee may proceed as if all of the Mortgaged Property were real property in accordance with subparagraph (iv) below, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is Mortgaged Property that can be severed from the Real Property and without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (iii) below, separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(ii) Mortgagee may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(iii) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subparagraph (i) above, it may dispose of any part hereof in any manner now or hereafter permitted by the Lease Documents and ORS 79.0601 to ORS 79.0628 or in accordance with any other remedy provided by law. Both Mortgagor and Mortgagee shall be eligible to purchase any part or all of such Property at any such disposition. Any such disposition may be either public or private as Mortgagee may so elect, subject to the provisions of the Lease Documents, the Oregon Uniform Commercial Code and all applicable law. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Mortgaged Property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor as provided in subparagraph (x) hereof, it shall constitute reasonable notice to Mortgagor to the extent permitted by applicable law.

(iv) Mortgagee may elect to sell the Mortgaged Property which is a leasehold interest in real property or which Mortgagee has elected to treat as real property in such manner now or hereafter permitted by applicable law and the Lease Documents, and upon such election Mortgagee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such Notice of Sale as may then be required by law, Mortgagee, at the time and place specified in the Notice of Sale, shall sell such Mortgaged Property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the

provisions of subparagraph (viii) hereof. Mortgagee for good cause may from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Mortgagor, or Mortgagee, may purchase at the sale. Upon any sale Mortgagee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the Mortgaged Property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession.

(v) In the event of a sale or other disposition of any such Mortgaged Property, or any part thereof, and the execution of a deed or other conveyance, pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed of conveyance shall be conclusive against all persons as to such facts recited therein.

(vi) The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient discharge from all obligations to see to the proper application of the consideration therefor.

(vii) Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

(viii) Upon any sale of the Mortgaged Property, whether made under the statutory power of sale herein granted or pursuant to judicial proceedings, if the Mortgagee is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the Mortgaged Property purchased, and, in such case, this Mortgage and documents evidencing expenditures secured hereby shall be presented to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

(ix) No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

(x) Mortgagor hereby requests that every notice of default and every notice of sale be given in accordance with the provisions of the Lease Documents except as otherwise required by statute.

#### 4.5 Separate Sales.

The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales, in the manner now or hereafter permitted by applicable law or by the Lease Documents.

#### 4.6 Remedies Cumulative, Concurrent and Nonexclusive.

Mortgagee shall have all rights, remedies and recourses granted in the Lease Documents and available at law or equity (including the Uniform Commercial Code), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Lease Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Lease Documents or otherwise at law or equity shall be deemed to cure any Event of Default except as expressly agreed in writing by Mortgagee.

#### 4.7 Receiver.

In addition to all other remedies herein provided for, Mortgagor agrees that after the occurrence and during the continuance of an Event of Default, Mortgagee shall as a matter of right be entitled, in accordance with the rights and remedies available under the Lease Documents, without the giving of notice to any other party, other than any notice required by the Lease Documents and applicable law and without regard to the adequacy of the value of the Collateral, to the full extent provided by law, to the appointment of a receiver or receivers by a court having jurisdiction, which receiver shall take charge and possession of and protect, preserve, and repair all or any part of the Collateral, and manage and operate the same, and receive and collect all rents, income, receipts, revenues, issues and profits therefrom, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Mortgagee, if made in accordance with the terms of the Lease Documents, and upon such appointment, Mortgagor shall promptly deliver possession of such Collateral to the receiver at the Site. The receiver shall have all the rights and powers permitted under applicable law. Mortgagor also irrevocably consents to the entry of an order authorizing such receiver to invest upon interest any funds held or received by the receiver in connection with such receivership, but nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided,

however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the rents and income pursuant to Section 3.1 hereof. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation owing by Mortgagor to Mortgagee, payable within thirty (30) days of Mortgagee's written demand therefor, shall be a part of the Secured Indebtedness and shall be secured by this Mortgage and by any other instrument securing the Secured Indebtedness.

#### 4.8 Proceeds of Sale.

The proceeds of any sale held by Mortgagee, any receiver or a public officer in foreclosure of the liens evidenced hereby shall be applied in accordance with the applicable provisions of this Mortgage and the Lease Documents, subject to the requirements of applicable law.

#### 4.9 Mortgagee as Purchaser.

Mortgagee shall have the right to become the purchaser at any sale held by Mortgagee or any receiver or public officer, and shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the Secured Indebtedness owing to Mortgagee.

#### 4.10 Uniform Commercial Code.

After the occurrence and during the continuance of an Event of Default, Mortgagee may exercise its rights of enforcement with respect to the UCC Collateral under applicable law, including, without limitation, to the extent applicable, the Uniform Commercial Code adopted under such law. If Mortgagee should proceed to dispose of any of the UCC Collateral in accordance with the provisions of the applicable Uniform Commercial Code, then ten (10) Business Days' notice by Mortgagee to Mortgagor shall be deemed to be commercially reasonable notice under any provision of the applicable Uniform Commercial Code requiring notice, unless a longer notice period shall be required by applicable law. Mortgagor, however, agrees that all property of every nature and description, whether real or personal, covered by this Mortgage together with all personal property used on or in connection with the Mortgaged Property or any business conducted thereon by Mortgagor and covered by separate security agreements, is encumbered as one unit, that this Mortgage and such security interests, at Mortgagee's option, may be foreclosed or sold in the same proceeding (including, without limitation, by a sale pursuant to the power of sale granted herein), and that all property encumbered (both realty and personalty) at Mortgagee's option, may be sold as such in one unit as a going business, subject to the provisions of ORS 79.0610 (and any successor statute) and other applicable law (unless a longer notice period shall be required by applicable law).

#### 4.11 Protective Advances.

Without limiting any other provisions of this Mortgage, if Mortgagor has failed to keep or perform any covenant whatsoever for which it is obligated under this Mortgage or under any other Lease Document, after the occurrence and during the continuance of an Event of Default,



Mortgagee may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, including, but not limited to making advances to protect the physical condition or value of the Mortgaged Property. Any advance or payment made or expense actually incurred by Mortgagee in the performance or attempted performance of any such covenant shall be and become part of the Secured Indebtedness hereunder, and shall be secured by the lien of this Mortgage as if such amounts were originally included within this Mortgage, subject to the provisions of Section 1.2 above. Mortgagor promises and agrees, within thirty (30) days of written demand by Mortgagee therefor, to pay to Mortgagee all sums so advanced or paid by Mortgagee. No such payment by Mortgagee shall constitute a waiver of any Event of Default. Mortgagor and Mortgagee acknowledge and agree that making of protective advances to pay costs to operate or otherwise to protect the Mortgaged Property is contemplated by the parties in the event Mortgagor fails to pay such costs or perform such covenants.

#### 4.12 Resort to Any Security.

Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion (consistent with the Lease Documents), and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

#### 4.13 Waiver.

TO THE FULL EXTENT MORTGAGOR MAY LAWFULLY DO SO, MORTGAGOR AGREES THAT MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PERTAINING TO THE RIGHTS AND REMEDIES OF SURETIES OR REDEMPTION, AND MORTGAGOR, FOR MORTGAGOR AND MORTGAGOR'S REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE COLLATERAL, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REDEMPTION, VALUATION, APPRAISEMENT, STAY OF EXECUTION, STATUTE OF LIMITATION, EXTENSION OR MORATORIUM, NOTICE OF INTENTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS, AND ALL RIGHTS TO A MARSHALLING OF THE ASSETS OF MORTGAGOR, INCLUDING THE COLLATERAL, OR TO A SALE IN INVERSE ORDER OF ALIENATION IN THE EVENT OF FORECLOSURE OF THE LIENS AND SECURITY INTERESTS HEREBY CREATED. UNLESS OTHERWISE PROHIBITED BY LAW, MORTGAGOR SHALL NOT HAVE OR ASSERT ANY RIGHT UNDER ANY STATUTE OR RULE OF LAW PERTAINING TO THE MARSHALLING OF ASSETS, SALE IN INVERSE ORDER OF ALIENATION, THE EXEMPTION OF HOMESTEAD, THE ADMINISTRATION OF ESTATES OF DECEDENTS OR OTHER MATTERS WHATEVER TO DEFEAT, REDUCE OR AFFECT THE RIGHT OF MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE TO ANY SALE OF THE COLLATERAL FOR THE COLLECTION OF THE SECURED INDEBTEDNESS WITHOUT ANY PRIOR OR DIFFERENT RESORT FOR COLLECTION, OR THE RIGHT OF MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE TO THE PAYMENT OF THE SECURED INDEBTEDNESS OUT OF THE PROCEEDS OF ANY SALE OF THE COLLATERAL IN PREFERENCE TO EVERY OTHER CLAIMANT WHATEVER. IF ANY LAW REFERRED TO IN THIS SECTION AND NOW IN FORCE, OF WHICH MORTGAGOR OR MORTGAGOR'S HEIRS, DEVISEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS AND SUCH OTHER PERSONS CLAIMING ANY INTEREST IN THE COLLATERAL MIGHT TAKE ADVANTAGE DESPITE THIS SECTION, SHALL HEREAFTER BE REPEALED OR CEASE TO BE IN FORCE, SUCH LAW SHALL NOT THEREAFTER BE DEEMED TO PRECLUDE THE APPLICATION OF THIS SECTION.

#### 4.14 Delivery of Possession After Foreclosure.

If, in the event there is a foreclosure sale hereunder and at the time of such sale Mortgagee or Mortgagee's successors or assigns or any other persons claiming any interest in the Mortgaged Property by, through or under Mortgagee, are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Unless such occupancy or use began prior to the recordation of this Mortgage, and subject to the terms of any applicable non-disturbance and/or attornment agreement between Mortgagee and any tenant(s) of the Mortgaged Property, any such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession

of said portion of the Mortgaged Property upon demand, the purchaser shall be entitled to exercise applicable remedies at law or in equity.

## **ARTICLE V. MISCELLANEOUS**

### **5.1     Actions by Mortgagee.**

The lien, security interest and other security rights of Mortgagee hereunder shall not be impaired by any indulgence, moratorium or release granted by Mortgagee, including but not limited to (a) any renewal, extension, increase or modification which Mortgagee may grant with respect to any Secured Indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Collateral, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, security interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Collateral.

### **5.2     Fixture Filing.**

To the extent that Mortgagor is not a "transmitting utility" (as defined in ORS 79.0102(1)(bbbb)), this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures (as defined in ORS 79.0102(1)(oo)) included within the Collateral, and is to be filed for record in the real estate records in the Jefferson County where the Collateral (including said fixtures) is situated. The mailing address of Mortgagor, and the address of Mortgagee from which information concerning the security interest may be obtained, is set forth in the first paragraph of this Mortgage.

### **5.3     Filing and Recordation.**

Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges relating thereto.

### **5.4     Dealing with Successor.**

In the event the ownership of the Collateral or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Collateral, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the indebtedness secured hereby given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor

hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by Mortgagee or otherwise in accordance with the Lease Documents.

5.5 Application of Indebtedness.

If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage, or if any part of the Collateral cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, or if the lien and security interest of this Mortgage are invalid or unenforceable as to any part of the Secured Indebtedness or as to any part of the Collateral, then Mortgagor shall not object to all payments made on the Secured Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, to the extent permitted by law, being applied on said indebtedness first in discharge of that portion thereof which is unsecured in whole or in part by this Mortgage.

5.6 Notice.

Any notice, request, demand or other communication required or permitted hereunder shall be given in the manner set forth in the Lease Documents. Notwithstanding, all notices of foreclosure, sale, default and the like required hereunder shall be given in accordance with applicable law.

5.7 Successors and Assigns.

The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the successors and assigns of Mortgagor including all successors in interest of Mortgagor in and to all or any part of the Collateral, and shall inure to the benefit of Mortgagee and its successors, and assigns. All references in this Mortgage to Mortgagor or Mortgagee shall be deemed to include all such successors and assigns. Notwithstanding the foregoing, Mortgagee may not assign this Mortgage or its rights hereunder except as permitted by the Lease Documents.

5.8 Severability.

If any provision of this Mortgage or any other Lease Document is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Mortgage and the Lease Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.9 Gender and Number.

Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural,

and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.10 Headings.

The section headings contained in this Mortgage are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections hereof.

5.11 Negation of Partnership.

Nothing contained in the Lease Documents is intended to create any partnership, joint venture or association among Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Collateral, and any inferences to the contrary are hereby expressly negated.

5.12 Entire Agreement.

This Mortgage and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof.

5.13 Applicable Law.

Mortgagor and, by its acceptance hereof, Mortgagee hereby agree that in all respects, including matters of construction, validity and performance, this Mortgage, to the extent justiciable thereunder, shall be governed by and construed in accordance with, the laws of the State of Ohio applicable to contracts made and performed in such State and any applicable law of the United States of America, except that the provisions for the creation, perfection, priority and enforcement of the grants, liens and security interests created hereby shall be governed by and construed according to the law of the State of Oregon, where the Real Property is located, it being understood that, to the fullest extent permitted by the law of the State of Oregon, the law of the State of Ohio shall govern the validity and the enforceability of the representations, warranties, covenants and obligations of Mortgagee under this Mortgage and all Lease Documents and all of the indebtedness arising hereunder or thereunder. To the fullest extent permitted by law, Mortgagor and Mortgagee hereby unconditionally and irrevocably waive any claim to assert that the law of any other jurisdiction governs this Mortgage, except as expressly otherwise provided above.

5.14 Releases.

Mortgagee reserves the right, at any time, to release portions of the Mortgaged Property, with or without consideration, at Mortgagee's election, and without waiving or affecting any of its rights hereunder or under the Lease Documents, and any such release shall not affect Mortgagee's rights in connection with the portion of the Mortgaged Property not so released.

5.15 Lease Documents.

In the event of any inconsistency between the provisions hereof and the provisions relating to the same subject matter in the Lease Documents, it is intended that, during the applicability of the Lease Documents, the Lease Documents shall be controlling; provided, however, that, in the event of any inconsistency between the provisions hereof and the provisions of the Lease Documents relating to the creation, perfection and enforcement (including, without limitation, foreclosure) of the liens created under this Mortgage, this Mortgage shall be controlling.

5.16 Additional Collateral.

(i) In addition to this Mortgage, the Secured Indebtedness is secured in part by other security documents, including the Guaranty, the Limited Guaranty, the Assignment Agreement and certain other documents referred to in the Master Purchase Agreement, and various terms and provisions affecting the Mortgaged Property are set forth in the Lease Documents. Reference is hereby made to the Lease Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of Mortgagor and the rights of Mortgagee with respect to such security.

(ii) Mortgagee may resort to any other security held by Mortgagee for the payment of the obligations secured by this Mortgage in such order and manner as Mortgagee may elect (subject to the Lease Documents).

(iii) Notwithstanding anything contained herein to the contrary, Mortgagee shall be under no duty to Mortgagor or others, including, without limitation, the holder of any junior, senior or subordinate mortgage on the Mortgaged Property or any part thereof or on any other security held by Mortgagee, to exercise or exhaust all or any of the rights, powers and remedies available to Mortgagee.

5.17 Nonagricultural Property.

The Mortgaged Property is not used principally for agricultural purposes.

5.18 Assumption Not a Novation.

Mortgagee's acceptance of an assumption of the obligations of this Mortgage, the Lease Documents and the obligations secured hereby, and the release of Mortgagor hereof, shall not constitute a novation.

5.19 Further Assurances.

At any time and from time to time, upon the reasonable request by Mortgagee in writing, Mortgagor will make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee, as directed by Mortgagee, and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed reasonably necessary or desirable by Mortgagee, any and all such

other and further assignments, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Mortgagee, be reasonably necessary in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Mortgagor under this Mortgage, and (b) the lien and security interest created by this Mortgage upon the Mortgaged Property. Upon any failure by Mortgagor so to do, Mortgagee may, upon ten (10) business days' prior notice to Mortgagor, make, execute, record, file, re-record and/or refile any and all such assignments, mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney in fact of Mortgagor so to do.

#### 5.20 Financing Statements.

Mortgagor hereby authorizes the filing of any financing statements or continuation statements, and amendments to financing statements, or any similar document in any jurisdictions and with any filing offices as Mortgagee may determine are necessary or advisable to perfect the security interest granted to Mortgagee herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of the Collateral that describes such property in any other manner as Mortgagee may reasonably determine is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to Mortgagee herein, including describing such property as "all assets" or "all personal property", whether now owned or hereafter acquired.

#### 5.21 Termination.

Notwithstanding anything in this Mortgage to the contrary, upon the repayment in full of all of the Secured Indebtedness (other than contingent indemnification and reimbursement obligations that, by their express terms, survive the termination of the Lease Documents) and the termination of the Master Lease Agreement (the date of such repayment and termination, the "Discharge Date"), this Mortgage and the liens and security interests granted hereby shall automatically terminate, all rights to the Mortgaged Property shall automatically revert to Mortgagor, and Mortgagee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Mortgaged Property, to or on the order of Mortgagor. Mortgagee shall also execute and deliver to Mortgagor, at Mortgagor's expense, upon such termination such UCC termination statements, releases, reconveyances and requests for release and reconveyance, and other documentation as shall be reasonably requested by Mortgagor to effect the termination and release of the grants, liens and security interests created under this Mortgage. The grants, liens and security interests created hereby shall also be released with respect to any portion of the Mortgaged Property that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Lease Documents or other documents pursuant to which any other Secured Indebtedness is incurred, as applicable.

**ARTICLE VI.**  
**PROVISIONS CONCERNING GROUND LEASE**

6.1 Generally.

Mortgagor agrees that Mortgagee may (but shall not be obligated to), after the occurrence and during the continuance of an Event of Default, take any action on behalf of Mortgagor to make or cause to be kept, observed or performed any such terms, covenants, provisions or agreements of the Ground Lease and to enter upon the Mortgaged Property and take all such action thereof as may be necessary therefor, to the end that the rights of Mortgagor in and to the leasehold estate created by the Ground Lease shall be kept unimpaired and free from default, and all money so expended by Mortgagee, with interest thereon at a rate per annum equal to the lower of (i) 10% per annum and (ii) the maximum amount allowable under applicable law (the “Default Rate”) from the date of written demand by Mortgagee to Mortgagor for payment of each such expenditure until such payment is made, shall be paid by Mortgagor to Mortgagee promptly upon written demand by Mortgagee and shall be added to the Secured Indebtedness, and Mortgagee shall have, in addition to any other remedy of Mortgagee, the same rights and remedies in the event of nonpayment of any such sum by Mortgagor as in the case of a default by Mortgagor in the payment of any sums due under any Lease Document.

6.2 No Release.

- (i) No release or forbearance of any of Mortgagor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Mortgagor from any of its obligations under this Mortgage.
- (ii) After the occurrence and during the continuance of an Event of Default, Mortgagor shall not make any election or give any consent or approval for which a right to do so is conferred upon Mortgagor as lessee or grantee, as applicable, under the Ground Lease without Mortgagee's prior written consent. In case of any Event of Default that is continuing, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purpose to Mortgagee, shall vest in and be exercisable solely by Mortgagee.

6.3 Covenants, Warranties and Representations.

- (i) Mortgagor hereby covenants, warrants and represents to Mortgagee with respect to the Ground Lease and the Ground Lease Interest as follows:
  - (a) Mortgagor will promptly after obtaining knowledge thereof notify Mortgagee of any material defaults under the Ground Lease and shall deliver to Mortgagee copies of any written notice actually received by Mortgagor of material default under the Ground Lease, or of any written notice actually received by Mortgagor from the then current lessor under the Ground Lease (“Ground Lessor”) of its intention to terminate the Ground Lease or to re-enter and take possession of the Real Property, promptly upon delivery or receipt of



such notice, as the case may be;

(b) Mortgagor shall promptly furnish to Mortgagee copies of such information and evidence as Mortgagee may reasonably request concerning Mortgagor's due observance, performance and compliance with the terms, covenants and conditions of the Ground Lease;

(c) After the occurrence and during the continuance of an Event of Default, Mortgagor, at its sole cost and expense, shall execute and deliver to Mortgagee, within ten (10) Business Days after written request, such documents, instruments or agreements as may be required to permit Mortgagee to cure any default by Mortgagor under the Ground Lease; and

(d) Mortgagor shall not after the date hereof subordinate or consent to the subordination of its interests under the Ground Lease to any mortgage lien, whether now existing or hereafter created, other than the Permitted Liens, without the prior written consent of Mortgagee.

(ii) In the event of default by Mortgagor in the performance of any of its obligations under the Ground Lease, including, but without limiting the generality of the foregoing, any default in the payment of any sums payable thereunder, and subject to the expiration of any applicable cure and grace periods, then, in each and every such case, to the extent permitted under the Ground Lease or as may have been or may be otherwise agreed to by the Ground Lessor, Mortgagee may, at its option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of Mortgagor. Subject to any applicable restrictions set forth in the Ground Lease, Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and immediate right to enter in and upon the Mortgaged Property or any part thereof to such extent and as often as Mortgagee, in its reasonable discretion, deems necessary or desirable in order to cure any such default with respect to the Ground Lease. Mortgagor shall, promptly following receipt of written demand, reimburse Mortgagee for all advances made and expenses incurred by Mortgagee in curing any such default (including, without limiting the generality of the foregoing, reasonable attorneys' fees and disbursements), together with interest thereon computed at the Default Rate from the date of such demand for reimbursement until the date the same is paid to Mortgagee.

(iii) Subject to the provisions of the Ground Lease, Mortgagor shall use commercially reasonable efforts to obtain and deliver to Mortgagee within twenty (20) days after written demand by Mortgagee, not more frequently than once each year, an estoppel certificate from Ground Lessor stating (1) that the Ground Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (2) the base rent payable under the Ground Lease, (3) the date to which all rental charges have been paid by Mortgagor, (4) whether a notice of default has been received by Ground Lessor, and if such notice has been received, the date it was received and the nature of the default, (5) whether there are any alleged defaults of Mortgagor under the Ground Lease and, if there are, setting forth

the nature thereof in reasonable detail and (6) to the knowledge of Ground Lessor, if Mortgagor shall be in default, the nature of the default.

(iv) Anything contained herein to the contrary notwithstanding, Mortgagee shall have no liability or obligation under the Ground Lease by reason of its acceptance of this Mortgage. Mortgagee shall be liable for the obligations of Mortgagor arising under the Ground Lease for only that period of time after which Mortgagee has acquired the Real Property, by foreclosure or otherwise and is holding all of Mortgagor's rights, title and interest therein.

(v) If Mortgagor shall acquire fee title to the property subject to the Ground Lease, or any other estate, title or interest in the property subject to the Ground Lease, or any portion thereof, then, immediately upon Mortgagor's acquisition thereof, this Mortgage automatically shall spread to cover Mortgagor's interest in such property on the same terms, covenants and conditions as set forth herein. Simultaneously with such acquisition, Mortgagor, at its sole cost and expense, shall deliver to Mortgagee a title insurance policy issued by a national title company and in a form and in an amount reasonably acceptable to Mortgagee, insuring that this Mortgage, as so spread to cover Mortgagor's interest in such property, is a valid first lien on Mortgagor's interest therein, subject only to Permitted Liens. It is the intention of Mortgagor and Mortgagee that no documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Mortgage to cover Mortgagor's interest in such property, as aforesaid, and that such spread shall occur automatically upon the consummation of Mortgagor's acquisition of such estate, title or interest to such property. Notwithstanding the foregoing, Mortgagor shall make, execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, all such further or other documents, instruments, agreements or assurances as may be required by Mortgagee to confirm the foregoing spread of this Mortgage to cover Mortgagor's interest in such property. Mortgagor shall pay all reasonable out-of-pocket expenses actually incurred by Mortgagee in connection with the preparation, execution, acknowledgment, delivery and/or recording of any such documents, including without limiting the generality of the foregoing, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes, and reasonable attorneys' fees, costs and disbursements.

(vi) If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of the Real Property or any part thereof or interest therein or any action or proceeding otherwise affecting the Ground Lease or this Mortgage shall be instituted, then Mortgagor will, promptly upon service thereof on or to Mortgagor, deliver to Mortgagee a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(vii) If the Ground Lease contains provisions which require mandatory arbitration for the resolution of any disputes arising thereunder and Mortgagor has any rights to agree to or approve such arbitration, Mortgagor will not agree to arbitrate any disputes arising under the Ground Lease without the written consent of Mortgagee, which consent can be withheld at the sole discretion of Mortgagee. Notwithstanding the foregoing, in the event

that Mortgagee consents to such an arbitration, Mortgagor will give Mortgagee prompt written notice of the commencement of such arbitration and so long as no Event of Default shall have occurred and be continuing, (1) Mortgagee shall have the right to intervene and participate in any such proceeding, (2) Mortgagor shall confer with Mortgagee to the extent which Mortgagee reasonably deems necessary for the protection of Mortgagee, upon the written request of Mortgagee and (3) Mortgagor shall select an arbitrator who is approved in writing by Mortgagee (which approval shall not be unreasonably withheld, conditioned or delayed), provided, however, that if at the time any such proceeding shall be commenced or shall be in progress an Event of Default shall have occurred and be continuing, Mortgagor hereby irrevocably appoints and constitutes Mortgagee as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to exercise, at the expense of Mortgagor, all right, title and interest of Mortgagor in connection with such arbitration, including the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Mortgagor. Nothing contained herein shall obligate Mortgagee to participate in such arbitration.

(viii) Mortgagor shall, within thirty (30) Business Days after written demand therefor from Mortgagee, deliver to Mortgagee reasonable proof of payment of all items that are required to be paid by Mortgagor under the Ground Lease, including, without limitation, rent and other charges required to be paid thereunder.

(ix) If the Ground Lease shall be terminated prior to the natural expiration of its terms, and if, pursuant to any provision of the Ground Lease or otherwise, Mortgagee or its designee shall acquire from Ground Lessor a new lease, of the Real Property or any portion thereof, Mortgagor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

(x) The following shall apply to any proceeding (a "Bankruptcy") under the Federal Bankruptcy Code, as amended, or comparable law ("Bankruptcy Law") in which Ground Lessor is the debtor:

(a) Mortgagor shall notify Mortgagee promptly after learning of the commencement of any Bankruptcy in which Ground Lessor is the debtor. Mortgagor promptly shall deliver to Mortgagee copies of any and all written notices, summonses, pleadings, applications and other documents that Mortgagor receives in connection with any such Bankruptcy and any related proceedings.

(b) If Ground Lessor rejects or disaffirms, or seeks or purports to reject or disaffirm, the Ground Lease or any provision thereof pursuant to any Bankruptcy Law, then Mortgagor shall not exercise its right to treat the Ground Lease or such provision thereof as terminated under Section 365 of the Federal Bankruptcy Code or any similar Bankruptcy Law, or any comparable right provided under any other Bankruptcy Law. Mortgagor's right under such circumstances to elect either to treat the Ground Lease or such provision thereof as terminated or to retain its rights under the Ground Lease or such provision thereof pursuant to Section 365 of the Federal Bankruptcy Code or any similar Bankruptcy Law, or any comparable right provided under any other Bankruptcy Law shall be hereinafter

referred to as the "365 Election".

(c) Mortgagor shall exercise the 365 Election in favor of Mortgagor's remaining in possession under the Ground Lease and retaining Mortgagor's rights thereunder at least five (5) Business Days prior to the last day on which the 365 Election may be exercised. Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact coupled with an interest, of Mortgagor, empowered and authorized in the name, place and stead of Mortgagor to exercise the 365 Election in favor of Mortgagor's remaining in possession under the Ground Lease and retaining Mortgagor's rights thereunder in the event Mortgagor fails to do within the time period set forth above. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, until the Discharge Date. Mortgagor acknowledges that Mortgagor's resulting occupancy and other rights, as adjusted by the effect of Federal Bankruptcy Code Section 365, are part of the Mortgaged Property and subject to the lien of this Mortgage. Mortgagor further acknowledges that exercise of the 365 Election in favor of terminating the Ground Lease or any provisions thereof would constitute waste prohibited by this Mortgage. Mortgagor acknowledges and agrees that the 365 Election is in the nature of a remedy available to Mortgagor under the Ground Lease, and is not an interest that Mortgagor can separate from the Ground Lease. Therefore, Mortgagor agrees and acknowledges that exercise of the 365 Election in favor of preserving the right to possession under the Ground Lease and Mortgagor's other rights thereunder shall not be deemed to constitute Mortgagee's taking or sale of the Mortgaged Property (or any element thereof) and shall not entitle Mortgagor to any credit against the Secured Indebtedness or otherwise impair Mortgagee's remedies hereunder or under any of the Lease Documents.

(d) Mortgagor shall provide Mortgagee with prompt notice of Ground Lessor's filing for Chapter 11 bankruptcy protection, and prompt notice of any motions or other filings seeking to sell the Real Property under Section 363 of Title 11 of the U.S. Bankruptcy Code ("Section 363"), in each case, of which Mortgagor has knowledge. Mortgagor acknowledges that Mortgagee may object to any sale of the Mortgaged Property under Section 363 so as to preserve the Ground Lease and Mortgagor's possessory interest in the Real Property. To the extent Mortgagor fails or refuses to so object to any Section 363 sale, Mortgagor hereby appoints Mortgagee as its agent for the limited purposes of filing objections in any Section 363 sale by Ground Lessor on Mortgagor's behalf.

(e) If Ground Lessor rejects or disaffirms the Ground Lease or purports or seeks to disaffirm the Ground Lease pursuant to any Bankruptcy Law, then: (1) Mortgagor shall remain in possession of the Real Property and shall perform all acts necessary for Mortgagor to remain in such possession and retain Mortgagor's other rights thereunder for the unexpired term of the Ground Lease, whether the then existing terms and provisions of the Ground Lease require such acts or otherwise; and (2) all terms and provisions of this Mortgage and the lien created

hereby shall remain in full force and effect and shall extend automatically to all of Mortgagor's rights and remedies arising at any time under, or pursuant to, Federal Bankruptcy Code Section 365, including all of Mortgagor's rights to remain in possession of the Real Property and retain Mortgagor's other rights thereunder.

(xi) If pursuant to Federal Bankruptcy Code Section 365, or any other similar Bankruptcy Law, Mortgagor seeks to offset against rent owing under the Ground Lease the amount of any claim for the payment of damages from Ground Lessor's failure to perform under the Ground Lease, or rejection of the Ground Lease under any Bankruptcy Law, then Mortgagor shall notify Mortgagee of its intent to do so at least twenty (20) Business Days before effecting such offset. Such notice shall set forth the amounts proposed to be so offset and the basis for such offset. If Mortgagee objects to all or any part of such offset, then Mortgagor shall not effect any offset of the amounts to which Mortgagee objects. If Mortgagee approves such offset, then Mortgagor may effect such offset as set forth in Mortgagor's notice. Neither Mortgagee's failure to object to, nor any objection or other communication between Mortgagor and Mortgagee that relates to, such offset shall constitute Mortgagee's approval of any such offset. Mortgagor shall indemnify Mortgagee against any loss or damage suffered by Mortgagee with respect to any offset against rent owing under the Ground Lease.

## **ARTICLE VII.**

### **STATE SPECIFIC PROVISIONS**

#### **7.1 Local Law Provisions.**

Anything elsewhere herein contained to the contrary notwithstanding, (a) in the event that any provision in this Mortgage shall be inconsistent with any provision of the laws of the State of Oregon, including ORS Chapter 88 or the remedies available under ORS Chapter 79 regarding foreclosure (the "Foreclosure Law"), the provisions of the Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Foreclosure Law; and (b) if any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee or such receiver under the Foreclosure Law in the absence of said provision, Mortgagee and such receiver shall be vested with the rights granted under the Foreclosure Law to the full extent permitted by law.

#### **7.2 Conflicting Provisions.**

The provisions of this Article VII are intended to supplement, and not limit, the other provisions of this Mortgage; provided, however, that in the event the provisions of this Article VII contradict any other provision of this Mortgage, the provisions of this Article VII shall govern.

### 7.3 Mortgage Tax.

Mortgagor shall (i) pay when due any tax imposed upon it or upon Mortgagee pursuant to the laws of the state in which the Mortgaged Property is located in connection with the execution, delivery and recordation of this Mortgage and any of the other Lease Documents, if any, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith, if any.

### 7.4 Covenants Running with the Leasehold Interest in the Land.

All obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the leasehold interest in the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent lessee of all or any portion of the Mortgaged Property. All persons who may have or acquire a leasehold interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Master Lease Agreement and the other Lease Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee. In addition, all of the covenants of Mortgagor in any Lease Document party thereto are incorporated herein by reference and, together with the covenants in contained herein, shall be covenants running with the land.

### 7.7 Waiver of Right to Jury Trial.

MORTGAGOR AND MORTGAGEE EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH MORTGAGOR AND/OR MORTGAGEE MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS MORTGAGE.

[Remainder of page intentionally blank; signatures begin on following page]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Mortgage on the date of its acknowledgment below, and effective as of the day, month and year first above written.

MORTGAGOR:

BLY SOLAR CENTER, LLC,  
an Oregon limited liability company

By: 

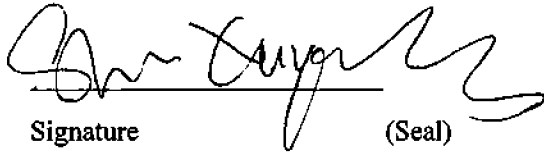
Name: Frank Zhu

Title: Authorized Real Property Signatory

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 Contra Costa

Subscribed and sworn to (or affirmed) before me Shell Xuyan Jiang.  
NOTARY PUBLIC on this 30th day of October, 2018, by Frank Zhu, proved to me on  
the basis of satisfactory evidence to be the person who appeared before me.

  
Signature (Seal)





## **EXHIBIT A**

### **Land**

A Leasehold in and to the following described property:

Land situated in the Northeast 1/4 of Section 11 Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 11;

Thence South 00°43'05" West 2665.50 feet to the East 1/4 corner of said Section 11;

Thence along the South line of the Northeast 1/4 of said Section 11, North 89°37'59" West 1050.02 feet;

Thence North 00°43'05" East 697.47 feet;

Thence South 89°16'55" East 739.95 feet;

Thence North 00°43'05" East 1057.00 feet;

Thence North 89°16'55" West 789.95 feet;

Thence South 00°43'05" West 1276.00 feet;

Thence North 89°16'55" West 850.00 feet;

Thence North 00°43'05" East 2183.27 feet to the North line of said Section 11;

Thence along said North line of Section 11, South 89°34'53" East 1950.03 feet to the POINT OF **BEGINNING**;

Contains 3,920,401 square feet or 90.00 acres, more or less.

Bearings are based upon County Survey 8153, Klamath County Survey Records.