

2019-003675

Klamath County, Oregon

04/05/2019 09:49:01 AM

Fee: \$277.00

After Recording Return To:

KEYSTONE FAMILY PROPERTIES

8261 E Loftwood Ln

Orange, CA 92867

Title order Number: **271248AM**

Date: **March 28, 2019**

Property Address: **41743 Royal Coachman Drive, Chiloquin, OR 97624**

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

Trustor (Borrower):

AEC EAT, LLC, a California Limited Liability Company as to an undivided 99.00% interest AND KAREN SUE WILLIAMS, TRUSTEE OF THE KAREN SUE WILLIAMS TRUST U.D.T. DATED NOVEMBER 1, 2016 as to an undivided 1.00% interest, as tenants in common.

Lender (Beneficiary):

Keystone Family Properties, LLC, a California Limited Liability Company

Trustee:

FCI Lender Services Inc., a California Corporation,
8180 E Kaiser Blvd., Anaheim Hills, CA 92808

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 8, 14, 16, 23, 25 and 26. Certain rules regarding the usage of words used in this document are also provided in Section 21.

(A) **Security Instrument** means this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, which is dated **March 28, 2019**, together with all Riders to this document.

(B) **Borrower** is collectively **AEC EAT, LLC**, organized and existing under the laws of **California**. Borrower is the grantor under this Security Instrument. Borrower's notice address is **22 Battery Street, Suite 806, San Francisco, CA 94111**

(C) **Principal** is **Adam Skarsgard**, and/or any other person who has or obtains an ownership interest in Borrower.

(D) **Lender** is **KEYSTONE FAMILY PROPERTIES**. Lender is a Limited Liability Company organized and existing under the laws of California. Lender's address is **8261 E Loftwood Ln, Orange, CA 92867**. Lender is the beneficiary under this Security Instrument.

(E) **Note** means the promissory note signed by Borrower and dated **March 28, 2019**. The Note states that Borrower owes **Two hundred sixty-five thousand and 00 cents (U.S. \$265,000.00)**

plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than the Maturity Date referenced in the Note.

(F) *Property* means the property that is described below under the heading *Grants/Transfer of Rights in the Property*.

(G) *Loan* means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) *Riders* means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower: N/A

- | | |
|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider |
| <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |

(I) *Applicable Law* means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) *Community Association Dues, Fees, and Assessments* means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) *Easements* means all easements, rights of way or use, streets, alleys, passages, sewer rights, water rights, development rights, and appurtenances of any nature, whatsoever, in any way now or hereafter, belonging, relating, or pertaining to the Land and the Improvements.

(L) *Electronic Funds Transfer* means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) *Escrow Items* means those items that are described in Section 3.

(N) *Fixtures* means all equipment and goods now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the equipment or goods are located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, appliances, attached mirrors, cabinets, paneling, floor coverings, machinery, blinds, shades, curtains and curtain rods, storm doors, storm windows, awnings, washers, dryers, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of

Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Property, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof. Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein.

(O) Improvements means the buildings, structures, fixtures, additions, extensions, modifications, replacements and improvements now or hereafter erected or located on the Land.

(P) Land means the real property, or those real properties, and/or leasehold interest(s) in such real property, described in **Exhibit A** attached hereto and made a part hereof, and located at **41743 Royal Coachman Drive, Chiloquin, OR 97624**

(Q) Leases includes any current or future leases of all or any portion of the Property, including without limitation any extensions or renewals thereof and any amendments thereto consented to by Lender.

(R) Licenses and Improvement Documents means any and all contracts, certifications, plans, specifications, architectural and/or engineering drawings for Improvements, licenses, permits and approvals, including without limitation, certificates of completion and occupancy permits now or hereinafter obtained relating to the Property.

(S) Miscellaneous Proceeds means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (1) damage to, or destruction of, the Property; (2) condemnation or other taking of all or any part of the Property; (3) conveyance in lieu of condemnation; or (4) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(T) Mortgage Insurance means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(U) Periodic Payment means the regularly scheduled amount due for (1) principal and interest under the Note, plus (2) any amounts under Section 3 of this Security Instrument.

(V) Rents means all rentals, earnings, income, deposits, security deposits (subject to the right of tenants, if any), receipts, royalties, revenues, issues and profits, and accounts receivable generated from the use and operation of all or any portion of the Property, which, after the date hereof, and while any portion of the indebtedness secured hereby remains unpaid, may accrue from the Property and any part thereof.

(W) Successor in Interest of Borrower means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

(X) Trustee is Old Republic Title Company, or any successor trustee under this Security Instrument appointed in accordance with Applicable Law.

GRANTS/TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender the following (collectively, the ***Secured Obligations***): (1) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (2) the performance of Borrower's covenants and agreements under this Security Instrument, the Note and all other documents executed or delivered in connection with the Loan, together with any renewals, extensions, modifications or replacements of any of these documents. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale and right of entry and possession, all estate, right, title and interest of Borrower, now or hereafter acquired, in, to and under the Land, together with (i) all the Improvements now or hereafter erected on the Land, (ii) all Licenses and Improvement Documents, Easements, appurtenances, and Fixtures now or hereafter a part of or located upon the Land or Improvements, (iii) all Escrow Items and Miscellaneous Proceeds, and (iv) all Leases and Rents. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the ***Property***.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

OBLIGATIONS/AGREEMENT

Borrower represents, covenants and agrees with Lender as follows:

1. *Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.* Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 20. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan

current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note. Notwithstanding the foregoing, Lender, in its sole discretion, may at any time apply payments in such other order and manner as Lender may elect.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the **Funds**) to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 13. These items are called **Escrow Items**. At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 12. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item,

Lender may exercise its rights under Section 12 and pay such amount and Borrower shall then be obligated under Section 12 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 20 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section.

Lender may, at any time, collect and hold Funds in an amount sufficient to permit Lender to apply the Funds when due. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items when due. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds.

If there is a surplus of Funds held in escrow, Lender shall account to Borrower for the excess funds and shall either refund the surplus Funds or apply them to the next year's escrow payments, at Lender's sole discretion. If there are insufficient amount of Funds to pay the escrow items when due, Lender shall notify Borrower, and Borrower shall pay to Lender the amount necessary to make up the shortage as Lender requires, in its sole discretion, but in no more than 6 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission. Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender (in Lender's sole and absolute discretion), but only so long as Borrower is performing such agreement; or (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's sole and absolute opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

Notwithstanding anything stated to the contrary under this Security Instrument and any other documents Borrower has executed in connection with the Loan, Borrower agrees that no liens including without limitation any lien or right to a lien for services, labor, material, equipment rental or workers compensation regardless of whether such lien is shown on the public records has or shall be filed against the Property. To the extent Lender's title policy with respect to the Property shows an exception to the foregoing, Borrower acknowledges that notwithstanding such exception, Borrower continues to represent, warrant and covenant with Lender that no such lien has or shall be filed on the Property. If such a lien is discovered on any Property, Borrower acknowledges that Borrower shall be in Default under the Loan.

5. Property/Rental Loss Insurance. Borrower shall keep the Improvements and Fixtures now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. Borrower shall also maintain rental loss insurance. All insurance hereunder shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and

Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 27 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your

prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

6. *Loan Purpose; Occupancy.* This Loan is for a business purpose and under no circumstance shall Borrower occupy, establish, or use the Property, or any part thereof, as Borrower's residence or the residence of any Principal. Borrower represents and warrants to Lender that the Loan is made exclusively for commercial, investment or business purposes and no portion thereof shall be used for any agricultural, consumer, personal, family or household purpose.

7. *Preservation, Maintenance and Protection of the Property; Inspections.* Borrower shall NOT destroy for any purposes, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in livable, good, and safe conditions and repair in order to prevent the Property from deteriorating or decreasing in value due to its condition. The Improvements and the Fixtures shall not be removed from the Property, demolished or materially altered (except for normal replacement of these items and refurbishment of the Improvements) without Lender's written consent.

Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. *Security Agreement.* This Security Instrument is both a real property mortgage or deed of trust, and a "security agreement" and a financing statement within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and

interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby pledges, assigns and grants to Lender and Trustee, as security for the Loan, a continuing security interest in the Fixtures, and the other property constituting the Property to the full extent that the Fixtures, and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the ***Collateral***). If Borrower is in default under the Note or this Security Instrument, Lender or Trustee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code or otherwise provided at law or in equity, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender or Trustee after the occurrence and during the continuance of a default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender or Trustee at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees and costs, incurred or paid by Lender or Trustee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of a default. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of any amounts due under the Note or this Security Instrument in such priority and proportions as Lender in its discretion shall deem proper.

All property of every kind acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

9. Fixture Filing. Certain of the Property is or will become ***Fixtures*** (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such Fixtures are situated, shall operate also as a financing statement (naming Borrower as the Debtor and Lender as the Secured Party) filed as a fixture filing in accordance with the applicable provisions of the Uniform Commercial Code upon such of the Property that is or may become Fixtures. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the signature of Borrower.

10. *Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.*

(a) As part of the consideration for the obligations secured by the Security Instrument, Borrower irrevocably and unconditionally assigns and transfers to Lender all Leases and Rents as security for the Secured Obligations. The assignment of rents and leases provided for in this Security Instrument is intended as security for the Secured Obligations, pursuant to ORS 93.806 and, upon recording of this Security Instrument, shall immediately perfect the security interest in Lender and shall not require any further action by Lender to be perfected as to any subsequent purchaser, mortgagee, or assignee of any interest in the Property. The lien created by such assignment shall, when recorded, be deemed specific, perfected, and choate.

(b) Until a default by Borrower has occurred and is continuing, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into new Leases, subject to the limitations set forth in the loan documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay the Periodic Payments and the other amounts then due and payable under the other loan documents, and to pay the current costs and expenses of managing, operating and maintaining the Property, including utilities and other assessments (to the extent not included in the Escrow Items, if Borrower is making monthly payments for these Items), tenant improvements and other capital expenditures. So long as no default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute a default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument.

(c) If a default has occurred and is continuing, without the necessity of Lender entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Borrower pursuant to the immediately preceding subsection (b) shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Borrower under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of a default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time during the continuance of a default, Lender may make demand for all Rents, and Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of a default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit.

(d) If a default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Property, and may exclude Borrower and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or

desirable for the operation and maintenance of the Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Lender's election), the making of repairs to the Property and the execution or termination of contracts providing for the management, operation or maintenance of the Property, for the purposes of enforcing this assignment of Rents, protecting the Property or the security of this Security Instrument and the Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

(e) Notwithstanding any other right provided Lender under this Security Instrument or any other loan document, if a default has occurred and is continuing, and regardless of the adequacy of Lender's security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, Lender shall have the right to an appointment of a receiver and Lender may apply to any court having jurisdiction for the appointment of a receiver for the Property to take any or all of the actions set forth in this Section. If Lender elects to seek the appointment of a receiver for the Property at any time after a default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Property and such fee shall become an additional part of the Loan. Immediately upon appointment of a receiver or Lender's entry upon and taking possession and control of the Property, possession of the Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable. If Lender or receiver takes possession and control of the Property, Lender or receiver may exclude Borrower and its representatives from the Property.

(f) The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section shall not at any time or in any event obligate Lender to take any action under any loan document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person in, on or about the Property. Prior to Lender's actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

(i) obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);

(ii) obligated to appear in or defend any action or proceeding relating to any Lease or the Property; or

(iii) responsible for the operation, control, care, management or repair of the Property or any portion of the Property.

The execution of this Security Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Borrower, prior to such actual entry and taking possession and control by Lender of the Land and Improvements.

(g) Lender shall be liable to account only to Borrower and only for Rents actually received by Lender. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of any act or omission of Lender under this

Section, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. If the Rents are not sufficient to meet the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Loan, be immediately due and payable, and bear interest at the Default Rate, if any, from the date of disbursement until fully paid. Any entering upon and taking control of the Property by Lender or the receiver, and any application of Rents as provided in this Security Instrument, shall not cure or waive any default or invalidate any other right or remedy of Lender under applicable law or provided for in this Security Instrument or any loan document.

(h) In addition to all other obligations under this Security Instrument, Borrower agrees to provide Lender (within 10 business days of Lender's request) (i) a full, complete and updated Certificate of Leases and Rent Roll in form and substance acceptable to Lender, (ii) a copy of all Leases and (iii) such evidence as Lender deems reasonably necessary to show each respective tenant's payment of his/her/their obligations under such Lease.

(i) Application of Rents. Trustor shall apply the Rents and Profits to the payment of all necessary and reasonable operating costs and expenses of the Property, and debt service on the Indebtedness secured hereby, before using the Rents and Profits for Trustor's personal use or any other purpose not of the direct benefit of the Property.

(j) Direct Creditor. Beneficiary shall be deemed to be the creditor of each lessee in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of the Beneficiary, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein). Beneficiary shall have the right to assign Trustor's right, title and interest in any leases to any subsequent holder of this Deed of Trust of any participating interest therein or to any person acquiring title to all or any part of the Property through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Beneficiary. Beneficiary shall have the authority, as Trustor's attorney-in-fact, such authority being coupled with any interest and irrevocable, to sign the name of the Trustor and to bind Trustor on all papers and documents relating to the operation, leasing and maintenance of the Property.

Notwithstanding anything to the contrary contained in this Assignment or any of the other loan documents, Assignee shall have the right to exercise any and all of its rights and remedies granted it under this Assignment as well as all remedies available to it under Applicable Law.

11. Lender's Reliance on Borrower Representations. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's non-occupancy of the Property.

12. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (including, but not limited to, a

proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument, regarding Environmental Laws, fraudulent conveyance, or insolvency, or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (x) paying any sums secured by a lien which has priority over this Security Instrument; (y) appearing in, defending, or bringing any action or proceeding; and (z) paying fees and out-of-pocket expenses for attorneys, accountants, inspectors and consultants necessary to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section, Lender, in its sole discretion, does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section.

Any amounts disbursed by Lender under this Section shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

13. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such

termination or until termination is required by Applicable Law. Nothing in this Section affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further, any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

14. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the

Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. ***Opposing Party*** means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 24, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

15. Borrower Not Released; Forbearance By Lender Not a Waiver. The failure of Lender to insist upon strict performance of any term of this Security Instrument shall not be deemed a waiver of any term of this Security Instrument. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

Borrower shall not be relieved of Borrower's obligations under this Security Instrument by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions of this Security Instrument or of the Note or the other loan documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or

of any person liable for the obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other loan documents.

16. *Joint and Several Liability; Co-signers; Successors and Assigns Bound.* Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 23, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 25) and benefit the successors and assigns of Lender.

17. *Relationship of Borrower and Lender.* The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of the Note, this Security Instrument or any other loan document shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

18. *Further Acts.* Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender and Trustee to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender and Trustee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section.

19. *Loan Charges.* Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on

the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

20. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Borrower's address on the first page of this Security Instrument unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address for Borrower under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

21. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located (the **Property Jurisdiction**). Borrower agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular

shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

22. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

23. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section, *Interest in the Property* means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 16 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

24. Borrower's Right to Reinstate After Acceleration. Where the Trustee has commenced foreclosure of this Security Instrument by advertisement and sale, the Grantor, the Grantor's successor in interest to all or any part of the Property, any beneficiary under a subordinate trust deed, or any person having a subordinate lien or encumbrance of record on the Property, may cure the default or defaults at any time prior to five days before the date last set for the sale. If the default consists of a failure to pay, when due, sums secured by this Security Instrument, the default may be cured by paying the entire amount due at the time of cure under the terms of the Secured Obligations, other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or this Security Instrument. In any case, and in addition to paying the sums or tendering the performance necessary to cure the default, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the Secured Obligations and this Security Instrument, together with trustee's and attorney fees in the amount of reasonable attorney fees and trustee's fees actually charged by the trustee and attorney. Borrower hereby agrees that for purposes of the forgoing: (a) costs and expenses incurred in enforcing the Secured Obligations and this Security Instrument shall include, but shall not be limited to, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (b) Borrower shall pay such reinstatement sums in one or more of the following forms: (i) cash; (ii) money order; (iii) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (iv) Electronic Funds Transfer; and (c) if Borrower so cures all defaults, then Borrower shall promptly take such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged.

Borrower hereby acknowledges that the right to reinstate set out in this Section 24 shall not apply in the case of acceleration under Section 23.

25. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the **Loan Servicer**) that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 20) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 27 and the notice of acceleration given to Borrower pursuant to Section 23 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section.

26. Hazardous Substances. As used in this Section: (a) **Hazardous Substances** are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) **Environmental Law** means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) **Environmental Cleanup** includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an **Environmental Condition** means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (e) that is in violation of any Environmental Law, (f) which creates an Environmental Condition, or (g) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (h) any investigation, claim,

demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (i) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (j) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Lender may bring an action for breach of contract against Borrower for breach of any provision contained in this Section, for the recovery of the environmental damages listed below, and for the enforcement of this Hazardous Substance section and whether or not this Security Instrument has been discharged, reconveyed or foreclosed upon. Notwithstanding the foregoing, no injunction for the enforcement of this Section may be issued after (k) satisfaction of the Loan or (l) transfer of Borrower's right, title and interest in and to the **Real Property Security** (as such term is defined under Applicable Law in a bona fide transaction to an unaffiliated third party for fair value.

The damages that Lender may recover pursuant to this Section shall be limited to reimbursement or indemnification of the following (collectively, the **Environmental Damages**): (m) if not pursuant to an order of any governmental authority relating to the cleanup, remediation, or other response action required by any applicable rule promulgated by a governmental authority, those costs relating to a reasonable and good faith cleanup, remediation, or other response action concerning a Release (such term shall have the meaning ascribed to it under Applicable Law) or threatened release of Hazardous Materials (each an **Environmental Problem**); (n) if pursuant to an order of any governmental authority, all amounts reasonably advanced in good faith by Lender in connection therewith, provided that Lender negotiated, or attempted to negotiate, in good faith to minimize the amounts it was required to advance under the order; (o) indemnification against all liabilities of Lender to any third party relating to the breach and not arising from acts, omissions or other conduct which occur after Borrower is no longer an owner or operator of the Property in accordance with the standards set forth under Applicable Law and (p) attorneys' fees and costs incurred by Lender relating to the breach. Notwithstanding the foregoing, the Environmental Damages recoverable by Lender shall not include (q) any part of the principal amount or accrued interest of the Loan, except for any amounts advanced by Lender to cure or mitigate the breach of this Hazardous Substances section that is added to the principal amount, and contractual interest thereon, or (r) amounts which relate to a Release which was knowingly permitted, caused or contributed to by Lender or any affiliate or agent of Lender.

Lender shall have the right, but not the obligation, to enter upon the Property, from time to time upon prior reasonable notice, and in its sole and absolute discretion, to conduct inspections of the Property and the activities conducted thereon to determine the compliance with all Environmental Laws, the presence of Hazardous Materials and the existence of any potential damages as a result of the condition of Property. In furtherance thereof, Borrower hereby grants to Lender and its agents, employees and qualified consultants and contractors, the right to enter upon the Property and to perform such tests on the Property (including invasive tests) as Lender determines are reasonably necessary. Lender shall conduct such inspections and tests at reasonable times, shall use its best efforts to minimize interference with the operation of the Property and

agrees to restore the condition of the Property, but Lender shall not be liable for any interference caused thereby unless due to the gross negligence or willful misconduct or omission of Lender. In furtherance of the purposes above, without limitation of any of Lender's other rights, Lender may: (s) obtain a court order to enforce Lender's right to enter and inspect the Property under under Applicable Law, to which the decision of Lender as to whether there exists any Hazardous Materials on or about the Property in violation of any Environmental Laws, or a breach by Borrower of any environmental provision of this Security Instrument or any of the other loan documents, will be deemed reasonable and conclusive as between the parties; and (t) have a receiver be appointed pursuant to Applicable Law to enforce Lender's right to enter and inspect the Property for the purpose set forth above.

Borrower and Lender agree that: (u) this paragraph is intended as Lender's written request for information and Borrower's written response concerning the environmental condition of the Property as provided under Applicable Law; and (v) each representation, warranty or covenant, or indemnity made by Borrower in this Security Instrument or in the other loan documents that relates to the environmental condition of the Property is intended by Borrower and Lender to be an "environmental provision" and will survive the payment of the Loan and the termination or expiration of this Security Instrument and will not be affected by Lender's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of foreclosure, or otherwise. If there is any transfer of any portion of Borrower's interest in the Property, any successor-in-interest to Borrower agrees by its succession to that interest that the written request made pursuant to this paragraph will be deemed remade to the successor-in-interest without any further or additional action on the part of Lender and that by assuming the Loan secured by this Security Instrument or by accepting the interest of Borrower subject to the lien of this Security Instrument, the successor remakes each of the representations and warranties in this Security Instrument and agrees to be bound by each covenant in this Security Instrument, including but not limited to any indemnity provision.

27. Acceleration; Remedies. Notwithstanding anything to the contrary contained in this Security Instrument or any of the other loan documents, in the event of a breach or default hereunder or under any other Loan Document that remains unremedied following any notice and cure or grace period (if any) that is expressly applicable to such breach or default, Lender shall have the right to exercise any and all rights and remedies granted it hereunder.

In the event of a breach or default hereunder or under any other Loan Document that involves the payment of any principal, interest, or fee to Lender, or the payment of any other monetary obligation owing in connection with the Loan or any other monetary obligations secured hereby, Lender shall have no obligation to provide notice to Borrower and may proceed, immediately and without notice, to exercise and all of its rights and remedies hereunder, including without limitation acceleration of all amounts owing under the Note and the Loan. In the event of a non-monetary breach or default hereunder or under any other Loan Documents that is not subject to the preceding sentence, Lender shall give notice of such default to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 23 unless Applicable Law provides otherwise). If the applicable non-monetary default is not cured within thirty (30) days following delivery of Lender's notice, Lender at its option may accelerate the indebtedness secured hereby and require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be

entitled to collect all expenses incurred in pursuing the remedies provided in this Section, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall, or shall cause Trustee to, give such notices and take such other actions as are required by Applicable Law in order to hold a trustee's sale in accordance with Chapter 86 of Oregon Revised Statutes. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and such other notice, if any, as is required by Applicable Law. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. Such Trustee's deed shall contain, in addition to a description of the Property conveyed, a recital of the facts concerning the default, the notice given, the conduct of the sale and the receipt of the purchase money from the purchaser. When the Trustee's deed is recorded in the deed records of the county or counties where the Property is situated, the recitals contained in the deed and in the affidavits required under ORS 86.774 (3) and (4) shall be prima facie evidence in any court of the truth of the matters set forth therein, but the recitals shall be conclusive in favor of a purchaser for value in good faith relying upon them.

Trustee shall apply the proceeds of the sale in accordance with ORS 86.794 or other Applicable Law. Borrower hereby agrees that in applying such proceeds to the Secured Obligation, in accordance with such statute, such proceeds shall be applied to the components of the Secured Obligation in the following order: (a) repayment of the portion of the Loan attributable to any sums expended or advanced by Lender (other than the Environmental Damages and costs incurred by Lender with respect to any Environmental Problem) under the terms of this Security Instrument, plus interest at the Default Rate; (b) payment of all other Loan and all other Secured Obligations, in any order that Lender chooses; and (c) repayment of the portion of the Loan attributable to the Environmental Damages and costs incurred by Lender with respect to any Environmental Problem under the terms of this Security Instrument, plus interest at the Default Rate.

The receipt for the purchase money recited or in any deed executed to the purchaser will be sufficient discharge to the purchaser from all obligations to see to the proper application of the purchase money.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Security Instrument shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Lender may also:

(w) foreclose this Security Instrument judicially as a mortgage;

(x) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, and/or the personal property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, and/or the personal property, and (ii) request Borrower at its expense to assemble the Fixtures, and/or the personal property and make it available to Lender or Trustee at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Fixtures, and/or the personal property sent to Borrower in accordance with the provisions of this Security Instrument at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(y) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of this Security Instrument or any other loan document to the payment of the following items in any order in its sole discretion:

(i) Taxes and Other Charges;

(ii) Insurance Premiums;

(iii) Interest on the unpaid principal balance of the Note;

(iv) Amortization of the unpaid principal balance of the Note; or

(v) All other sums payable pursuant to the Note, this Security Instrument and the other loan documents, including advances made by Lender pursuant to the terms of this Security Instrument; and

(z) pursue such other rights and remedies as Lender may have under Applicable Law or in equity or under any other loan documents or other documents evidencing or securing any obligation secured hereby.

28. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and may in its discretion surrender this Security Instrument and all notes evidencing the Secured Obligations to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, if any, the fee is conclusively presumed to be reasonable.

29. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located in accordance with Applicable Law. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

30. Borrower Representations and Warranties. Borrower represents and warrants as of the date hereof that:

(a) **Organization.** If Borrower is a business entity, Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. Borrower (i) has complied in all respects with its certificate of incorporation, bylaws, limited partnership agreement, articles of organization and limited liability company operating agreement, as applicable; (ii) has maintained complete books and records and bank accounts separate from those of its Affiliates; (iii) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof); and (iv) has all requisite power and authority to conduct its business and to own its property, as now conducted or owned, and as contemplated by this Security Instrument, including, without limitation, the power and authority to do business in the state in which the Property is located. The signatory hereto has all necessary power, authority and legal right to execute this Security Instrument, the Note and the other loan documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

(b) **Proceedings.** Borrower has taken all necessary action to authorize the execution, delivery and performance of this Security Instrument and the other loan documents. This Security Instrument and the other loan documents have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(c) **No Conflicts.** The execution, delivery and performance of this Security Instrument and the other loan documents by Borrower and/or Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the loan documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any legal requirements of any governmental authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such governmental authority required for the execution, delivery and performance by Borrower and/or Guarantor, as applicable, of this Security Instrument or any other loan documents has been obtained and is in full force and effect.

(d) **Litigation.** There are no actions, suits or proceedings at law or in equity by or before any governmental authority or other agency now pending or threatened against or affecting Borrower, Guarantor, Principal or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor, Principal or the Property, might materially adversely affect the

condition (financial or otherwise) or business of Borrower, Guarantor, Principal or the condition or ownership of the Property.

(e) **Agreements.** Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (i) any obligations incurred in the ordinary course of the operation of the Property, and (ii) the obligations under the loan documents.

(f) **Solvency.** Borrower has (i) not entered into the transaction contemplated by the loan documents or executed the Note, or any other loan documents with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under such loan documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of the obligations of Borrower). No Bankruptcy Action exists against Borrower or any Principal, and neither Borrower nor Principal has ever been a party to a Bankruptcy Action. Neither Borrower nor Principal is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's assets or properties, and Borrower has no knowledge of any person contemplating the filing of any petition against it or any Principal.

(g) **Full and Accurate Disclosure.** No statement of fact made by or on behalf of Borrower in any of the loan documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower or Guarantor.

(h) **Compliance.** Borrower and the Property (including the use thereof) comply in all material respects with all applicable legal requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any governmental authority. Neither the Improvements as constructed, nor the use of the Property by Tenants under the Leases and the contemplated accessory uses, will violate (i) any legal requirements (including subdivision, zoning, building, environmental protection and wetland protection legal requirements), or (ii) any building permits, restrictions or records, or agreements affecting the Property or any part thereof. Neither the zoning

authorizations, approvals or variances nor any other right to construct or to use the Property is to any extent dependent upon or related to any real estate other than the Property.

(i) **Financial Information.** All financial data with respect to the Property and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of the Property and Guarantor as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a investment property, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no Material Adverse Change in the financial condition, operation or business of Borrower or Guarantor from that set forth in said financial statements.

(j) **Condemnation.** No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of any roadway providing access to the Property.

(k) **Utilities and Public Access.** The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and the Property is served by a sewer system maintained by a Governmental Authority or property owners association.

(l) **Not a Foreign Person.** Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code.

(m) **Separate Lots.** The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

(n) **Assessments.** There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(o) **Enforceability.** The loan documents are enforceable by Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. The loan documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the loan documents, or the exercise of any right thereunder, render the loan documents unenforceable (subject to principles of equity and bankruptcy, insolvency and

other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

(p) **No Prior Assignment.** There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

(q) **Insurance.** Borrower has obtained and has delivered to Lender certified copies of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and no person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such Policies.

(r) **Use of Property; No Agricultural Use; Waiver of Homestead.** The Property is owned by Borrower exclusively for commercial purpose, either for repair and resale purposes or for use as a rental single family home or a multi-family apartment complex and other appurtenant and related uses. The Property is not used principally for agricultural or farming purposes. Borrower will not at any time claim the Property or any portion thereof as a homestead and waives any and all right, if any, to claim the Property or any portion thereof as a homestead or to assert any homestead exemption with respect thereto.

(s) **Licenses and Improvement Documents; Certificate of Occupancy.** All Licenses and Improvement Documents required for the legal use, and/or the occupancy and operation of the Property as a single family residence or a multi-family apartment complex, have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses and Improvement Documents necessary for the operation of the Property as a single family residence or a multi-family apartment complex. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

(t) **Flood Zone.** None of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required under this Security Instrument hereof is in full force and effect with respect to the Property.

(u) **Physical Condition.** The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components are in good condition, order and repair in all material respects. There exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(v) **Boundaries.** All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to adversely affect the value or marketability of the Property except those easements or other

encumbrances with respect to which the Title Insurance Policy insures against any losses resulting therefrom.

(w) **Leases.** The Property is not subject to any Leases other than the Leases described on the rent roll attached to the Certificate of Leases and Rent Roll. Borrower is the owner and lessor of landlord's interest in the Leases. No person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. The copies of the Leases and any related guaranty (including all amendments thereto) delivered to Lender are accurate, true and complete, and there are no oral agreements with respect thereto. No Rent (other than security deposits, if any) has been paid more than one (1) month in advance of its due date. All work to be performed by the landlord under each Lease has been performed as required in such Lease and has been accepted by the applicable Tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by the landlord under such Lease to any Tenant has already been received by such Tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein which is still in effect. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the Property of which the leased premises are a part. Lender shall have the right, but not the obligation, to cure any default of Borrower under any of the Leases and all amounts disbursed in connection with said cure shall be deemed to be disbursements under this Security Instrument and shall be due and payable to Lender promptly following demand.

(x) **Principal Place of Business; State of Organization.** If Borrower is a business entity, (i) Borrower's principal place of business as of the date hereof is the address set forth in the Definitions section of this Security Instrument, and (ii) Borrower is duly organized under the laws of the state of its organization.

(y) **Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any person under applicable legal requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any person under applicable legal requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the loan documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously herewith.

(z) **No Change in Facts or Circumstances; Disclosure.** All information submitted by Borrower to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations and/or the financial condition of Borrower or Guarantor. Borrower and Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any Provided Information or representation or warranty made herein to be materially misleading.

Borrower agrees that all of the representations and warranties of Borrower set forth in this Security Instrument and in the other loan documents shall survive for so long as any amount remains owing to Lender under any of the loan documents by Borrower. All representations, warranties, covenants and agreements made in the loan documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

31. *Default Rate Under Note.* Borrower acknowledges that the Note contains a provision regarding a "Default Rate" of interest, which provision is incorporated herein by this reference.

32. *Statement of Obligation Fee.* Lender may collect a reasonable fee for furnishing a statement of the Secured Obligations at Borrower's request.

33. *Mortgagee-in-Possession.* Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Security Instrument shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

34. *Time is of the Essence.* Borrower agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other loan documents, time is of the essence.

35. *WAIVER OF TRIAL BY JURY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH OF BORROWER AND LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.*

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS

OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Disclosure. By Oregon Statute (ORS 41.580), the following disclosure is required: Under Oregon law, most agreements, promises and commitments made by us concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by the lender to be enforceable.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

BORROWER:

**AEC EAT LLC, a California Limited
Liability Company as to an undivided
99.00% interest**

By: 
Name: Adam Skarsgard
Title: Managing Member

**KAREN SUE WILLIAMS, TRUSTEE OF
THE KAREN SUE WILLIAMS TRUST
U.D.T. DATED NOVEMBER 1, 2016 as to
an Undivided 1.00% interest**

By: _____
Name: Karen Sue Williams
Title: Trustee

ACKNOWLEDGMENT

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

State of California
County of San Francisco)

On March 29, 2019 before me, J. McCulloch
(insert name and title of the officer)

personally appeared Adam Skarsgard
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

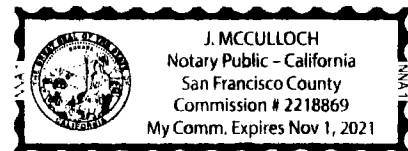
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

J. McCulloch

(Seal)



BORROWER:

**AEC EAT LLC, a California Limited
Liability Company as to an undivided
99.00% interest**

By: _____

Name: Adam Skarsgard

Title: Managing Member

**KAREN SUE WILLIAMS, TRUSTEE OF
THE KAREN SUE WILLIAMS TRUST
U.D.T. DATED NOVEMBER 1, 2016 as to
an Undivided 1.00% interest**

By:  _____

Name: Karen Sue Williams

Title: Trustee

_____/Space Below This Line for Acknowledgment/_____

Form of notary acknowledgment for an entity (if there are multiple levels of entities in the signature block, describe each entity and its position with respect to the next higher entity in the signature block – e.g., “Acme, Inc., a corporation that is the sole member of XYZ LLC, a limited liability company”):

STATE OF _____

ss.

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, a [corporation/limited liability company/partnership], to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20 ____.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of _____,
residing at _____

My appointment expires _____

SEE ATTACHED
ACKNOWLEDGMENT
TB

Deed of Trust, Assignment of Rents,
Security Agreement and Fixture Filing

ACKNOWLEDGMENT

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

State of California
County of Contra Costa

On March 28th, 2019 before me, Troy Bilodeau, Notary Public
(insert name and title of the officer)

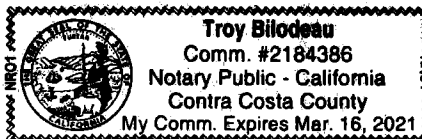
personally appeared Karen Sue Williams
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

LS.



(Seal)

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot 20 in Block 1 of RAINBOW PARK ON THE WILLIAMSON, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.