

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

First Republic Bank  
111 Pine Street  
San Francisco, CA 94111  
Attn: Loan Review

**Loan Number:** 17-644611-6

☐ IF THE PRECEDING BOX IS CHECKED, THIS IS A  
**CONSTRUCTION TRUST DEED**



**FIRST REPUBLIC BANK**

It's a privilege to serve you®

(Space above this line for Recorder's use)

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

THIS DEED OF TRUST, FIXTURE FILING, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (the "Deed of Trust") is made on **June 11, 2019**, by **FERRIS KLAMATH FALLS INVESTMENT PROPERTY, LLC**, an Oregon limited liability company ("Grantor"), whose address is **2336 Octavia Street San Francisco, CA 94109** in favor of **Fidelity National Title Insurance Company**, a California corporation ("Trustee"), whose address is **50 California St., San Francisco, CA 94111**, for the benefit of **First Republic Bank** ("Beneficiary"), as beneficiary, whose principal office is located at **111 Pine Street, San Francisco, California 94111**.

THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN ACCORDANCE WITH ORS 79.0502. THE COLLATERAL IS OR INCLUDES FIXTURES.

GRANTOR IRREVOCABLY GRANTS, CONVEYS, TRANSFERS AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE and right of entry and possession, all of Grantor's present and future estate, right, title and interest in and to the following described property (collectively, the "Property"):

(A) The following described real property located in the County of **Klamath**, State of **OR** (the "Land"):

**See Exhibit "A" attached hereto and incorporated herein by this reference.**

The street or common address of the Land is:

**3500 Washburn Way  
Klamath Falls, OR 97603**

(B) All Buildings, Fixtures, Easements, Rents and Profits, Development Rights, Water Rights, Mineral Rights, and Crops (as each of such terms is defined in Article 1 of this Deed of Trust).

AmériTitle 299345AM / CT 472519002501 COMM

303

THIS DEED OF TRUST SECURES THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (collectively, the "Obligations") in such order of priority as Beneficiary may from time to time elect:

(1) Payment and performance of Grantor's indebtedness and obligations under the promissory note of even date herewith in the original face principal amount of **One Million and 00/100 Dollars (\$1,000,000.00)** executed by Grantor and payable to Beneficiary, or order, and all extensions, renewals, modifications, and replacements thereof (collectively, the "Note"), **which matures on July 1, 2029;**

(2) Payment and performance of Grantor's indebtedness and obligations under this Deed of Trust and all extensions, renewals, and modifications of this Deed of Trust;

(3) Payment of all sums of money which may be advanced by, or otherwise due to, Trustee or Beneficiary under any provision of this Deed of Trust or to protect the security of this Deed of Trust, with interest thereon at the rate provided in this Deed of Trust;

(4) Payment and performance of Grantor's indebtedness and obligations under the Building Loan Agreement or Loan Agreement, if any, of even date herewith between Grantor and Beneficiary which states that it is secured by this Deed of Trust and all extensions, renewals, and modifications thereof (the "Loan Agreement");

(5) Payment and performance of all indebtedness and obligations owing on account of each future loan that Beneficiary may elect to make to Grantor or the record owner of the Land when the promissory note evidencing such loan specifically states that it is secured by this Deed of Trust, and all extensions, renewals, modifications, and replacements thereof (such loans are referred to individually as a "Future Advance" and collectively as the "Future Advances"); and

(6) Payment and performance of Grantor's indebtedness and obligations under all other existing and future agreements executed by Grantor in connection with the loan evidenced by the Note (the "Loan") or in connection with any Future Advance, with interest thereon at the rate provided in such agreements, when such agreement specifically states that it is secured by this Deed of Trust, and all extensions, renewals, and modifications of such agreements. The foregoing notwithstanding, this Deed of Trust does not secure any obligations, liabilities or indebtedness under the Environmental Indemnity Agreement from Grantor to Beneficiary of even date herewith or under any other agreements, instruments or documents entered into in connection with the Loan which, by their express terms, are not secured hereby. All of such obligations and the substantial equivalents thereof (the "Unsecured Obligations") shall constitute the separate, unsecured full recourse obligations of Grantor (and/or the other obligors, if any, thereon) and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust. If any provision of this Deed of Trust or any Loan Document secured by this Deed of Trust could be construed so as to include an Unsecured Obligation, such provision shall be deemed and construed to exclude the Unsecured Obligation.

FOR VALUABLE CONSIDERATION, Grantor agrees as follows:

## **ARTICLE 1**

### **DEFINITIONS**

For purposes of this Deed of Trust, the following terms shall have the following definitions:

1.1 **Books and Records.** "Books and Records" means all books and records relating to the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including (a) records reflecting the results of operation of the Property; (b) all Leases and other documents relating to the Property; and (c) Grantor's federal income tax returns for the year in which the Loan is made and each subsequent year that the Loan is outstanding.

1.2 **Buildings.** "Buildings" means all buildings, structures and other improvements now existing or hereafter located on the Land.

1.3 **Commercial Project.** "Commercial Project" means a multifamily residential project or a retail, office, industrial or other commercial project which produces or generates or is intended to produce or generate any form of Rents and Profits from its operation. "Multifamily Project" means a Commercial Project that consists of a multifamily residential dwelling, including an apartment building.

1.4 **Condemnation Claims.** "Condemnation Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Grantor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any condemnation of the Property or other taking of the Property for public or quasi-public use by eminent domain or to the transfer of the Property in lieu of condemnation or any such taking.

1.5 **Condemnation Proceeds.** "Condemnation Proceeds" means all proceeds of the Condemnation Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Condemnation Claims.

1.6 **Controlled Substances.** "Controlled Substances" means marijuana, cannabis, or other controlled substances as defined in the Federal Controlled Substances Act or that otherwise are illegal or regulated under any Controlled Substances Laws.

1.7 **Controlled Substances Laws.** "Controlled Substances Laws" means the Federal Controlled Substances Act (21 U.S.C. §§ 801 et seq.) or any other similar or related federal, state or local law, ordinance, code, rule, regulation, or order.

1.8 **Controlled Substances Use.** "Controlled Substances Use" means any cultivation, growth, creation, production, manufacture, sale, distribution, storage, handling, possession, or other use of a Controlled Substance.

1.9 **Covenants and Restrictions.** "Covenants and Restrictions" means all covenants, conditions, restrictions, equitable servitudes, and all other similar matters now or hereafter affecting the Property, including any condominium, planned unit development, or cooperative apartment declaration of covenants, conditions and restrictions, by-laws, articles, rules, and regulations to which Grantor or the Property is subject or bound.

1.10 **Crops.** "Crops" means all crops, trees and vines now or hereafter growing on the Land.

1.11 **Development Rights.** "Development Rights" means all existing and future development rights, development credits, air rights, and options of any kind relating to the Property.

1.12 **Disclosure Statement.** "Disclosure Statement" means a disclosure statement or environmental questionnaire, in either case regarding Hazardous Substances, which has been executed by Grantor and provided to Beneficiary.

1.13 **Easements.** "Easements" means all existing and future easements, rights of way, licenses, and similar rights relating or appurtenant to the Property and all existing and future rights in or to streets, roads, sidewalks, alleys, strips and gores adjoining or used in connection with the Property.

1.14 **Environmental Report.** "Environmental Report" means a Phase I environmental assessment, a Phase II environmental assessment, an ASTM Transaction Screen, or a regulatory database review, as applicable.

**1.15 Event of Default.** "Event of Default" means any of the events described in Article 3 of this Deed of Trust.

**1.16 Fixtures.** "Fixtures" means all fixtures, machinery, equipment, building materials, and appliances now or hereafter located in, on, attached or affixed to, or used in connection with the Land or the Buildings, including all systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light; elevators, escalators and related machinery and equipment; fire prevention and extinguishing equipment and water sprinkler systems; security and access control equipment; water heaters, showers, bathtubs, tanks, pumps, toilets, sinks, pipes, and other plumbing fixtures and equipment; stoves, ranges, refrigerators, dishwashers, and disposals; laundry equipment; engines, motors, generators, boilers, furnaces, and incinerators; wall, window, and floor coverings, including screens, shades, drapes, and awnings; partitions, doors, windows, cabinets, bookcases, and hardware; janitorial, maintenance, and waste and rubbish removal equipment; recreational equipment; signs; switchboards, telephone systems, and other communication equipment; television, radio, and computer cables, antennae, and other equipment; chandeliers and other light fixtures; trees, plants and other landscaping; and all attachments, substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing, all of which shall conclusively be deemed to be part of the Land and Buildings and conveyed by this Deed of Trust, whether or not affixed or attached to the Land; provided however, should the Land now or hereafter be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, the term "Fixtures" shall be limited to the items of personal property which (i) constitute Goods or Equipment under Article 9 of the Code, and (ii) are specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage similarly issued by a private issuer to satisfy the National Flood Insurance Act (as amended).

**1.17 Governmental Authorities.** "Governmental Authorities" means (a) the United States; (b) the state, county, city, or other political subdivision in which the Land is located; and (c) all other governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities or authorities, including, without limitation, all judicial authorities and public utilities having or exercising jurisdiction over Grantor or the Property.

**1.18 Governmental Permits.** "Governmental Permits" means all permits, approvals, and authorizations now or hereafter issued by all Governmental Authorities for or in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including grading permits, foundation permits, building permits, tentative subdivision map approvals, zone changes, zone variances, conditional use permits, temporary certificates of occupancy, and final certificates of occupancy.

**1.19 Governmental Requirements.** "Governmental Requirements" means all existing and future laws, ordinances, rules, regulations, orders, and requirements of all Governmental Authorities applicable to Grantor or the Property, including those respecting the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property.

**1.20 Ground Lease.** "Ground Lease" means any lease agreement creating a leasehold estate which is now or hereafter encumbered by this Deed of Trust.

**1.21 Guaranties.** "Guaranties" means the guaranty agreement or agreements executed by the Guarantors.

**1.22 Guarantors.** "Guarantors" means the Person or Persons, if any, now or hereafter guaranteeing payment of the Note or payment or performance of any or all of the other Obligations.

**1.23 Hazardous Substance.** "Hazardous Substance" means any: (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any Hazardous Substance Laws, as the same may be amended from time to time; (b) any

substance, product, waste or other material of any nature whatsoever which may give rise to liability (i) under any Hazardous Substance Law; (ii) under any statutory or common law theory, including negligence, trespass, intentional tort, nuisance or strict liability; or (iii) under any reported decisions of any state or federal court; (c) petroleum, petroleum products and by-products, gasoline or crude oil; (d) asbestos or asbestos containing materials; (e) polychlorinated biphenyls, lead, radon, flammables, explosives, and radioactive materials; and (f) mold and/or airborne pathogens (naturally occurring or otherwise) which pose a threat to human health or the environment or adversely affect the Property.

**1.24 Hazardous Substance Laws.** "Hazardous Substance Laws" means all existing and future laws, ordinances, rules, regulations, orders and requirements of all Governmental Authorities relating to any or all of the following, as such may be amended from time to time: (a) any Hazardous Substance, including the use, storage, generation, production, treatment, disposal, handling, release, discharge, transportation, repair, cleanup, remediation, removal or decontamination of any Hazardous Substance; (b) industrial hygiene or the environmental conditions in, on, above, under or about the Property or any surrounding property, including air, soil, and groundwater conditions; and (c) the protection of human health or the environment and/or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Hazardous Substance Laws" shall include but is not limited to: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq. ("CERCLA"); (ii) The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, 49 U.S.C. §§ 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; (iv) the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.; (v) the Clean Water Act, 33 U.S.C. Sections 1251, et seq.; (vi) Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; (vii) Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq.; (viii) Clean Air Act, 42 U.S.C. §§ 7401, et seq.; (ix) Safe Drinking Water Act of 1974, 42 U.S.C. §§ 300f, et seq.; (x) Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651, et seq.; (xi) Federal Water Pollution Control Act 33 U.S.C. §§ 2351, et seq.; (xii) Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; (xiii) Endangered Species Act of 1973, 16 U.S.C. §§ 1531, et seq.; (xiv) National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, et seq.; (xv) Oil Pollution Act of 1990, 33 U.S.C. §§ 2701, et seq.; (xvi) Rivers and Harbors Appropriation Act, 33 U.S.C. §§ 401, et seq.; and (xvii) all other existing and future federal, state and local laws, ordinances, rules, regulations, orders, requirements, reported decisions of state or federal courts, common law, and decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material.

**1.25 Hazardous Substance Claims and Losses.** "Hazardous Substance Claims and Losses" means all claims, demands, damages (including special and consequential damages), liabilities, actions, causes of action, legal proceedings, administrative proceedings, suits, injuries, costs, losses, debts, liens, interest, fines, charges, penalties and expenses (including reasonable attorneys', accountants', consultants', and expert witness fees and costs) of every kind and nature (all of the foregoing are referred to collectively as the "Claims and Losses") which directly or indirectly arise out of or relate to any or all of the following: (a) Any breach by Grantor of any obligation contained in Article 8; (b) the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, above, under or about the Property, whether caused by Grantor or any other person, including any prior owner, tenant, or occupant of the Property; (c) any past, present, or threatened release or transport of any Hazardous Substance in, on, above, under or about the Property or from the Property, including contamination of any surrounding property or any natural resources (including air, soil or groundwater), whether caused by Grantor or any other person, including any prior owner, tenant, or occupant of the Property; (d) the violation of any Hazardous Substance Laws with respect to the Property, whether by Grantor or any other person, including any prior owner, tenant, or occupant of the Property; (e) any repair, cleanup, remediation, removal, closure, or decontamination activity relating to any Hazardous Substance existing in, on, above, under or about the Property, including any preparation for and investigation, testing, and monitoring relating to any such activity, whether or not such activity is undertaken or required as a result of any requirement of any Governmental Authority; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any environmental lien encumbering the Property; (g) any personal injury, death, or property or other damage resulting from or relating to any or all of the matters described in clauses 1.20(a) through 1.20(f) above.

**1.26 Impositions.** "Impositions" means all (a) Taxes; (b) Insurance Premiums; (c) gas, electricity, water, sewer, and other utility charges which are incurred for the benefit of the Property or which may become a lien against the Property; (d) assessments, charges, and fees imposed pursuant to any Covenants and Restrictions; (e) assessments, charges and fees payable with respect to any Easements, Water Rights or Development Rights; (f) principal, interest, and other amounts payable in connection with any Liens; (g) rents and other amounts payable under any Ground Lease; and (h) such other taxes, charges, premiums, assessments and impositions relating to the Property, the payment of which Beneficiary determines to be necessary to protect Beneficiary's security for the Obligations.

**1.27 Improvements.** "Improvements" means the Buildings and Fixtures, collectively.

**1.28 Insurance Claims.** "Insurance Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Grantor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise under any policy of insurance which Grantor maintains with respect to the Property or which Grantor is required to maintain under this Deed of Trust (collectively, the "Insurance Policies").

**1.29 Insurance Proceeds.** "Insurance Proceeds" means all proceeds of the Insurance Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Insurance Claims.

**1.30 Insurance Premiums.** "Insurance Premiums" means all premiums and other amounts payable in connection with procuring or maintaining the Insurance Policies.

**1.31 Leases.** "Leases" means all existing and future rental agreements, leases, licenses, concessions, occupancy agreements, and other similar agreements affecting the Property, including all subleases at any level.

**1.32 Liens.** "Liens" means all mortgages, deeds of trust, mechanics' liens, and other liens and encumbrances of every kind and nature, other than this Deed of Trust, now or hereafter affecting the Property.

**1.33 Loan Documents.** "Loan Documents" means the Note, this Deed of Trust, the Loan Agreement, if any, all promissory notes evidencing any Future Advances, all other documents secured by this Deed of Trust, and all other documents executed by Grantor or any of the Guarantors and delivered to Beneficiary at Beneficiary's request in connection with the Loan or any Future Advance, and all extensions, renewals, modifications, and replacements of such documents.

**1.34 Mineral Rights.** "Mineral Rights" means all existing and future right, title, and interest in and to all minerals, oil, gas and other hydrocarbon substances in or on the Property.

**1.35 Permitted Substances.** "Permitted Substances" means general office supplies and products, cleaning supplies and products, petroleum and petroleum products contained within regularly operated motor vehicles and other commonly used supplies and products (a) which are either (i) customarily used in the ordinary course of business by Grantor or (ii) are used by its tenants in the ordinary course of tenant's business or tenant's residency and, in all cases, in compliance with Leases that either do not require Beneficiary's approval under the terms of the Loan Documents or which have been approved by Beneficiary in accordance with the Loan Documents; (b) which are used in the manner for which there were designed; (c) which are used in such amounts as may be normal and prudent for such supplies and products; and (d) which are handled, stored and disposed of in compliance with applicable Hazardous Substance Laws.

1.36 **Person.** "Person" means any natural person or any entity, including any corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, trustee, or Governmental Authority.

1.37 **Property Claims.** "Property Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature (other than the Insurance Claims and Condemnation Claims) which Grantor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any or all of the following: (a) the Property; (b) any existing or future fact, matter, occurrence, or transaction relating to the Property; or (c) the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

1.38 **Property Proceeds.** "Property Proceeds" means all proceeds of the Property Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Property Claims.

1.39 **Rents and Profits.** "Rents and Profits" means all existing and future rents, royalties, issues, profits, proceeds, revenues, income and other benefits of the Property and all Leases, including all security deposits and prepaid rent.

1.40 **Taxes.** "Taxes" means (a) all taxes, bonds, levies and assessments now or hereafter affecting the Property, including all general and special real and personal property taxes, bonds, and assessments affecting the Property; (b) all other taxes, bonds, levies and assessments which now are or hereafter may become a lien on the Property, including all income, profits, franchise, withholding, and gross receipt taxes; (c) all other charges now or hereafter imposed on or assessed against the Property by any Governmental Authority or arising with respect to the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property; and (d) all taxes, bonds, levies, and assessments now or hereafter imposed by any Governmental Authorities on Trustee or Beneficiary by reason of their respective interests in this Deed of Trust, the Note, or any promissory note evidencing a Future Advance, excluding any franchise, estate, inheritance, income, or similar tax imposed on Beneficiary or Trustee.

1.41 **Tenants.** "Tenants" means all tenants and occupants of the Property under the Leases.

1.42 **Water rights.** "Water rights" means all existing and future water, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), and all water stock relating to the Property.

## **ARTICLE 2**

### **COVENANTS OF GRANTOR**

2.1 **Performance of Secured Obligations.** Grantor shall pay and perform each and all of the Obligations in accordance with their respective terms.

2.2 **Preservation of the Property.** Grantor (a) shall maintain the Property in good condition and repair; (b) shall promptly repair and restore in a good and workmanlike manner any part of the Property which may be damaged or destroyed, whether or not any Insurance Proceeds are adequate to pay for the cost of such repair and restoration; (c) shall comply and cause the Property to comply with the provisions of all Insurance Policies; (d) shall comply and cause the Property to comply with all Governmental Requirements including, without limitation, state and local rent control, rent stabilization, tenant protection or other tenant occupancy laws; (e) shall comply and cause the Property to comply with all Covenants and Restrictions; (f) shall maintain in effect all Governmental Permits; (g) shall not initiate,

join in or consent to any change in the zoning, general plan, specific plan, or any other land use classification affecting the Property or any Covenant or Restriction without the prior written consent of Beneficiary; (h) shall not remove, demolish, improve, add to, or alter the Improvements (excluding non-structural alterations which preserve or increase the value of the Property, alterations required by Governmental Requirements, and the replacement of Fixtures in the ordinary course of business pursuant to Section 2.18 below) or change the character or use of the Property without the prior written consent of Beneficiary; (i) shall not commit or permit any waste respecting the Property or impairment of the Property; (j) shall not abandon the Property; (k) shall not commit or permit any act upon the Property in violation of any Governmental Requirements; (l) shall promptly complete in a good and workmanlike manner all Improvements which Grantor commences to construct on the Land; and (m) shall paint, cultivate, irrigate, fertilize, fumigate, prune, maintain and do all other acts, in a timely and proper manner, which from the character or use of the Property may be necessary or appropriate to preserve, protect and maintain the value of the Property.

**2.3 Insurance.** Grantor shall at all times maintain in full force (a) fire and extended coverage all risk insurance, together with such endorsements as Beneficiary may require, including vandalism, malicious mischief, earthquake, and flood coverage (if the Land is now or hereafter located in an area designated by the Director of the Federal Emergency Management Agency as a flood hazard area and flood insurance is or becomes available through the National Flood Insurance Program); (b) commercial general liability insurance; and (c) such other types of insurance as may from time to time be required by Beneficiary, including business interruption insurance, rental loss insurance, and workers' compensation insurance. Each of the Insurance Policies, including the amounts, form, coverage, deductibles, insurer and loss payable and cancellation provisions, shall be acceptable to Beneficiary. Without limiting any of the terms of this Section, (i) each of the Insurance Policies shall provide that it may be canceled or modified only upon not less than thirty (30) days prior written notice to Beneficiary; (ii) the fire and extended coverage and other casualty insurance policies which Grantor is required to maintain under this Deed of Trust shall contain a mortgagee's loss payable endorsement acceptable to Beneficiary naming Beneficiary as loss payee and shall be written with liability in an amount equal to the full replacement cost of the Improvements; and (iii) the commercial general liability policy which Grantor is required to maintain shall name Beneficiary as an additional insured and shall be primary and noncontributing with any insurance maintained by Beneficiary.

**2.4 Insurance Policies.** Upon Beneficiary's request, Grantor shall deliver to Beneficiary the originals of all Insurance Policies together with receipts for the full payment of all Insurance Premiums, and Beneficiary shall have the right to hold such policies as long as any Obligations are outstanding. By approving, disapproving, accepting, obtaining or failing to obtain any Insurance Policies, Beneficiary shall not be liable or responsible for the suitability, adequacy, enforceability, validity, amount, form, or content of any Insurance Policies, the solvency of any insurer, or the collection of any Insurance Proceeds, and Grantor shall at all times have full responsibility for all of such matters. Not later than thirty (30) days prior to the expiration of each of the Insurance Policies, Grantor shall deliver to Beneficiary a policy or policies renewing or extending the expiring Insurance Policies together with written evidence showing payment of the Insurance Premiums for such policies. If Grantor fails to deliver any of the Insurance Policies to Beneficiary in accordance with this Deed of Trust, or if any of the Insurance Policies is canceled, Beneficiary, without notice to or demand upon Grantor, shall have the right to obtain such insurance in such form, content and amount and with such insurer as Beneficiary determines to be necessary or appropriate to protect its interest. Without limiting any other provision of this Deed of Trust, all premiums and other costs and expenses paid or incurred by Beneficiary in connection with Beneficiary's obtaining any Insurance Policies under this Section shall be payable by Grantor to Beneficiary on Beneficiary's demand. Neither Trustee nor Beneficiary shall be obligated to obtain or maintain any policy of insurance with respect to the Property. All Insurance Policies relating to the Property and all unearned Insurance Premiums shall automatically inure to the benefit of and be deemed to be assigned to the grantee of the Property at any judicial or nonjudicial foreclosure sale under this Deed of Trust or by any deed in lieu of foreclosure under this Deed of Trust.

The following warning is inserted pursuant to ORS 746.201.



## **WARNING**

Unless Grantor provides Beneficiary with evidence of the insurance coverage as required by the Loan Agreement and this Deed of Trust, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantor's contract or loan balance. If the cost is added to Grantor's 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 Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**2.5 Assignment of Insurance Claims and Proceeds.** To secure the Obligations, Grantor grants, transfers, and assigns to Beneficiary the Insurance Claims and Insurance Proceeds.

**2.6 Assignment of Condemnation Claims and Proceeds and Other Claims.** To secure the Obligations, Grantor grants, transfers, and assigns to Beneficiary the Condemnation Claims, Condemnation Proceeds, Property Claims, and Property Proceeds.

**2.7 Payment of Proceeds.** Grantor shall cause all Insurance Proceeds, Condemnation Proceeds and Property Proceeds (collectively, the "Proceeds") to be paid or delivered directly to Beneficiary. Beneficiary shall at all times have the right but not the obligation (a) to demand, collect, accept, receive and give receipts for any and all of the Proceeds; and (b) to direct any Person to pay or deliver any or all of the Proceeds directly to Beneficiary. Nothing contained in this Deed of Trust shall be deemed to obligate Beneficiary to make any inquiry as to the sufficiency of any Proceeds received by Beneficiary. If for any reason Grantor receives any Proceeds, Grantor (i) shall immediately pay or deliver such Proceeds to Beneficiary in the original form in which received by Grantor; (ii) shall endorse, with recourse, all checks, drafts, money orders, notes, and other instruments or documents representing such Proceeds to Beneficiary; (iii) shall not commingle such Proceeds with any of Grantor's other funds or property; and (iv) shall hold such Proceeds separate and apart from its other funds and property in an express trust for Beneficiary until paid or delivered to Beneficiary.

**2.8 Prosecution and Settlement of Claims.** Prior to the occurrence of any Event of Default, Grantor shall have a license to prosecute and enforce the Insurance Claims, Condemnation Claims, and Property Claims (collectively, the "Claims"). Beneficiary shall at all times have the right to appear in, defend, and prosecute any action or proceeding arising out of or relating to any or all of the Claims if Beneficiary determines that such action is necessary or appropriate to protect Beneficiary's interest in connection with the Obligations. Upon the occurrence of an Event of Default, Grantor's license to prosecute and enforce the Claims shall be revoked upon, and to the extent provided in, notice by Beneficiary to Grantor. Following such revocation, Beneficiary, at its option, shall have the exclusive right to prosecute and enforce any or all of the Claims to the extent provided in Beneficiary's notice of revocation and to compromise, adjust, settle or dismiss any or all of the Claims, whether or not Beneficiary has taken possession of the Property. Without Beneficiary's prior written consent, Grantor shall not (a) sell, transfer, pledge, hypothecate or otherwise dispose of or abandon any or all of the Claims; or (b) compromise, adjust, settle, or dismiss any or all of the Claims.

**2.9 No Liability by Beneficiary.** Nothing contained in this Deed of Trust shall be deemed to obligate Beneficiary to prosecute or enforce any or all of the Claims nor shall Beneficiary have any liability or responsibility for any failure or delay by Beneficiary in prosecuting or enforcing any or all of the

Claims or to collect any or all of the Proceeds. Grantor shall at all times have the right to determine and follow its own policies and practices in the conduct of its business, subject to the terms and conditions of the Loan Documents. Nothing contained in this Deed of Trust nor Beneficiary's receipt of any Proceeds shall result in any obligation or liability by Beneficiary for the performance or observance of any of the terms of any document or Insurance Policies relating to any or all of the Claims or the Proceeds.

**2.10 Application of Proceeds.** Beneficiary, at its option, shall have the right (a) to apply any or all Proceeds received by Beneficiary to any or all of the Obligations in such order and manner as Beneficiary shall determine, whether or not such Obligations are then due and payable and without regard to the adequacy or impairment of the security for the Obligations; (b) to release any or all of the Proceeds received by Beneficiary for payment of the costs of repair or reconstruction of the Property on such terms and conditions as may be acceptable to Beneficiary; or (c) to release any or all of the Proceeds received by Beneficiary to Grantor on such terms and conditions as may be acceptable to Beneficiary. If and to the extent that the Note provides for Grantor's payment of a prepayment charge, such prepayment charge shall not apply with respect to principal prepayments resulting from Beneficiary's election to apply any Proceeds to the outstanding principal balance of the Note.

**2.11 Release of Proceeds for Reconstruction.** Without limiting the generality of Section 2.10 above, if Beneficiary elects to release any Proceeds for repair or reconstruction of the Property, at Beneficiary's option, such release shall be conditioned on Grantor's satisfaction of the following conditions within one hundred and twenty (120) days after the occurrence of the damage requiring the repair or reconstruction: (a) Grantor's deposit with Beneficiary of such funds in addition to the Proceeds as Beneficiary determines to be necessary to pay all direct and indirect costs relating to the repair or reconstruction of the Property; (b) the establishment of a procedure acceptable to Beneficiary for Beneficiary's disbursement of the Proceeds; (c) Beneficiary's receipt and approval of final plans and specifications and a cost breakdown for the repair or reconstruction of the Property; (d) Beneficiary's receipt and approval of (i) a general construction contract for the repair or reconstruction of the Property executed by Grantor and a contractor acceptable to Beneficiary; and (ii) payment and performance bonds written on such general contractor issued by a surety acceptable to Beneficiary; (e) evidence acceptable to Beneficiary that (i) the repair and reconstruction of the Property can be completed and a final and unconditional certificate of occupancy for the Property can be issued not later than thirty (30) days before the maturity date of the Note; (ii) upon completion of the repair or reconstruction of the Property, the income from the Property will be sufficient to pay all Impositions, operating expenses of the Property and installment payments due in connection with the Loan and any Future Advances; (iii) leases acceptable to Beneficiary will be in effect or remain in effect upon completion of the repair or reconstruction of the Property; (iv) upon completion of the repair or reconstruction of the Property, the fair market value of the Property will be at least as great as it was prior to the date on which the damage or condemnation occurred as shown in an appraisal acceptable to Beneficiary; (v) there has been no adverse change in the financial condition of Grantor or any Guarantors since the date of this Deed of Trust; and (vi) no Event of Default exists; and (f) such additional conditions as Beneficiary may establish.

**2.12 Taxes and Impositions.** Grantor (a) shall pay all Taxes at least ten (10) days before delinquency; and (b) shall pay all other Impositions when due. Upon Beneficiary's request, Grantor shall deliver to Beneficiary receipts and such other substantiating documentation as may be required by Beneficiary to evidence payment of all Impositions by Grantor in accordance with this Section. Grantor shall cause to be furnished to Beneficiary a reporting service for all Taxes of a type and duration and with a company acceptable to Beneficiary.

**2.13 Impounds.**

(a) **Impound Account.** Upon not less than ten (10) days prior written notice by Beneficiary to Grantor, Beneficiary, at its option and without regard as to whether any Event of Default exists, shall have the right to require Grantor (1) to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual amount of any or all Impositions as may be designated by Beneficiary (including Taxes and Insurance Premiums), as determined by Beneficiary; and (2) establish with and pay to Beneficiary a reserve for any or all Impositions as may be

designated by Beneficiary equal to two of the monthly installments described in clause (1) of this sentence. If Beneficiary exercises its right to require Grantor to make such deposits with Beneficiary, Grantor shall deliver to Beneficiary all bills, statements, and invoices relating to the Impositions immediately upon Grantor's receipt of such items. The amounts deposited by Grantor with Beneficiary pursuant to this Section 2.13 (collectively, the "Impound Funds") (i) shall not be deemed to be held by Beneficiary in trust or as agent of Grantor; (ii) shall not bear interest, except as otherwise expressly required by law; (iii) shall be applied by Beneficiary to the payment of the Impositions in such order of priority as Beneficiary shall determine, provided Grantor has delivered to Beneficiary the appropriate bills, statements and invoices relating to the Impositions not later than thirty (30) days prior to the due date thereof; and (iv) may be commingled by Beneficiary with its general funds. If, at any time within thirty (30) days prior to the due date of any of the Impositions, Beneficiary determines that the Impound Funds then held by Beneficiary are insufficient to pay such Impositions in full, upon Beneficiary's demand, Grantor shall deposit with Beneficiary the amount of such deficiency, as determined by Beneficiary. If the Impound Funds held by Beneficiary exceed the amount necessary to discharge the Impositions for which such Impound Funds were deposited, Beneficiary, at its option, may either refund such excess to Grantor or may hold such excess and reduce proportionately the periodic deposits required to be made by Grantor for payment of the Impositions.

(b) **Security Interest.** Grantor grants a security interest to Beneficiary in all Impound Funds deposited by Grantor with Beneficiary under this Section 2.13 to secure the Obligations. Upon the occurrence of any Event of Default, Beneficiary, at its option and without regard to the adequacy of any other collateral securing the Obligations, shall have the right to apply any or all of the Impound Funds to any or all of the Obligations in such amounts and order as Beneficiary may determine.

(c) **Assignment; Reconveyance.** If Beneficiary assigns this Deed of Trust, Beneficiary shall have the right to transfer all Impound Funds held by Beneficiary to Beneficiary's assignee. Upon such transfer, Beneficiary shall have no further liability of any kind with respect to the Impound Funds, and Beneficiary's assignee shall be deemed to have assumed all liabilities of Beneficiary with respect to the Impound Funds. Following full payment and performance of all of the Obligations and the reconveyance of the Property under this Deed of Trust, Beneficiary shall refund to Grantor any Impound Funds then held by Beneficiary.

(d) **No Liability for Insufficient Impound Funds.** Nothing contained in this Section 2.13 shall be deemed (i) to require Beneficiary to pay any amounts on account of any Impositions in excess of the Impound Funds held by Beneficiary; or (ii) to impair, prejudice or otherwise affect any of Beneficiary's rights or remedies under this Deed of Trust or under applicable law to pay any or all of the Impositions if the Impound Funds then held by Beneficiary are insufficient for such purposes and to add the amount paid by Beneficiary to the Indebtedness.

## **2.14 Absolute Assignment of Rents and Profits.**

(a) **Absolute Assignment.** Grantor absolutely, irrevocably and unconditionally grants, transfers and assigns to Beneficiary all Rents and Profits. Prior to the occurrence of an Event of Default, Grantor shall have a license to collect and retain on the terms of this Section 2.14 all Rents and Profits as they become due and payable. Upon the occurrence of an Event of Default, Grantor's license to collect the Rents and Profits shall automatically be revoked without notice to Grantor. Following such revocation, Beneficiary shall be entitled to collect and retain all Rents and Profits, whether or not Beneficiary has taken possession of the Property, and Grantor shall immediately pay or deliver to Beneficiary any Rents and Profits then held or thereafter collected by Grantor. All Rents and Profits collected by or on behalf of Beneficiary may be applied by Beneficiary to the Obligations in such order and amounts as Beneficiary may determine. If Beneficiary elects to seek the appointment of a receiver following the occurrence of an Event of Default, Grantor irrevocably and unconditionally consents to the appointment of a receiver without regard to the adequacy of the security for any of the Obligations. Notwithstanding anything to the contrary contained in this Deed of Trust, the assignment of Rents and Profits contained in this Section is an absolute assignment and not an assignment as security. Neither the assignment of Rents and Profits contained in this Section nor any action taken by Beneficiary to

collect the Rents and Profits shall be deemed to make Beneficiary a mortgagee-in-possession of the Property or shall be deemed to render Beneficiary directly or indirectly liable or responsible for (i) the use, control, condition, care, operation, occupancy, management, repair, or leasing of the Property; (ii) the production of Rents and Profits from the Property; or (iii) the performance or observance of any or all of Grantor's duties, obligations, representations, or warranties under any Leases or other agreements relating to the Rents and Profits. Beneficiary shall have no responsibility or liability of any kind for any failure or delay by Beneficiary in enforcing any of the terms or conditions of this Section 2.14.

(b) **Applications of Rents and Profits Prior to Revocation of License.** Grantor shall apply the Rents and Profits to the payment of all reasonable and necessary operating costs and expenses of the Property, installment payments due in connection with the Loan and any Future Advances, payment of Impositions, and a reasonable reserve for future reasonable and necessary expenses, repairs and replacements relating to the Property before using the Rents and Profits for any other purpose which does not directly benefit the Property.

(c) **Notices to Tenants.** Upon revocation of the license described in Section 2.14(a) above, Grantor irrevocably authorizes and directs all Tenants under the Leases to comply with any notice or demand by Beneficiary for payment to Beneficiary of any Rents and Profits or for the performance of any of the Tenant's other respective obligations under the Leases, regardless of any conflicting demand by Grantor or notice by Grantor to any Tenant that Beneficiary's demand is invalid or wrongful. No Tenant shall have any duty to inquire as to whether any default by Grantor has occurred under the Loan Documents in connection with any notice or demand by Beneficiary under this Section.

**2.15 Sales, Transfers, and Further Encumbrances.** Beneficiary shall have the right, at its option and without notice to or demand on Grantor, to declare any or all Obligations to be immediately due and payable if any of the following events occurs without Beneficiary's prior written consent: (a) the sale, conveyance, transfer, mortgage, encumbrance, lease (except for the leasing of space in the Improvements which is permitted under Section 2.19 below), or alienation of all or any part of the Property or any interest in the Property, whether voluntary or involuntary, or Grantor's grant of any option or agreement to effect any such transaction; (b) if Grantor or any General Partner or Manager of Grantor is a partnership, the admission, withdrawal, retirement or removal of any general partner of Grantor or any of Grantor's General Partners or Managers, or the sale or transfer of more than twenty-five percent (25%) of the beneficial interests in Grantor or any of Grantor's General Partners or Managers; (c) if Grantor or any General Partner or Manager of Grantor is a corporation, the sale or transfer of an aggregate of more than twenty-five percent (25%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust; (d) if Grantor or any General Partner or Manager of Grantor is a limited liability company, the appointment, withdrawal, retirement or removal of any Manager of Grantor or any of Grantor's General Partners or Managers or the sale or transfer of more than twenty-five percent (25%) of the beneficial interests in Grantor or any of Grantor's General Partners or Managers; (e) if Grantor or any of Grantor's General Partners or Managers is a corporation, partnership, or limited liability company, the dissolution or liquidation of Grantor or any of Grantor's General Partners or Managers; or (f) any material change in the character or use of all or part of the Property, including drilling for or the extraction of oil, gas or any other hydrocarbon substance or the lease of all or any part of the Property for any such purpose. Without limiting the generality of any provision of this Deed of Trust (including Section 6.8 below), Beneficiary's consent to any or all of the events described in this Section may be withheld by Beneficiary in its sole and absolute discretion. Beneficiary's consent to any event described in this Section shall not be deemed to be a consent to, or a waiver of the right to require such consent for, any other event. For purposes of this Deed of Trust, (i) the term "partnership" includes a general partnership, limited partnership, limited liability partnership, and joint venture; and (ii) the term "Manager" means any Person who is acting as a manager of a limited liability company, including any member who is acting in such capacity.

**2.16 Request for Beneficiary's Consent to Transfers.** All requests by Grantor for Beneficiary's consent under Section 2.15 above (a) shall specifically describe the transaction with respect to which Beneficiary's consent is requested; (b) shall be delivered to Beneficiary not less than thirty (30)

days before Grantor proposes to take the action with respect to which Beneficiary's consent is requested; (c) shall be accompanied by complete and accurate copies of all documents relating to the transaction with respect to which Beneficiary's consent is requested, including financial statements and other information regarding the proposed transferee; and (d) shall be accompanied by a non-refundable review fee payable to Beneficiary in the amount of \$750. Grantor acknowledges and agrees that Beneficiary's right to withhold its consent, in its sole and absolute discretion, to any or all of the events described in Section 2.15 above is based, in part, on the fact that Grantor's particular financial condition, credit history, character, experience, ability and expertise, as represented by Grantor to Beneficiary, were material and important factors in Beneficiary's decision to make the Loan, and that Beneficiary will continue to rely on such matters to insure satisfactory compliance with the Loan Documents during the entire term of the Loan. If Beneficiary, in its sole and absolute discretion, consents to any of the transactions described in Section 2.15 above, (i) such consent shall not be deemed to release Grantor or any other Person liable for payment or performance of the Obligations, and Grantor and such Persons shall continue to remain liable for payment and performance of the Obligations in accordance with the terms of the Loan Documents, unless expressly released pursuant to a further written agreement signed by Beneficiary; and (ii) such consent shall be conditioned on [A] the payment to Beneficiary of all costs, fees, and expenses incurred by Beneficiary in connection with its review, analysis, and preparation of documents with respect to the proposed transaction, including all attorneys' fees and costs incurred by Beneficiary; and [B] the satisfaction of such other conditions as Beneficiary, in its sole and absolute discretion, may establish in connection with the proposed transaction. Nothing contained in this Section constitutes or shall be construed as an agreement by Beneficiary to consent to any or all of the transactions described in Section 2.15 above or to impair or otherwise affect in any way Beneficiary's right to withhold its consent to any or all of such transactions in Beneficiary's sole and absolute discretion.

**2.17 Subordinate Mortgages.** If Beneficiary consents to any other Lien on the Property ("Subordinate Mortgage"), or if the prohibition on Grantor's execution of any Subordinate Mortgage is unenforceable under applicable law, Grantor shall not execute any Subordinate Mortgage unless Grantor has first delivered to Beneficiary a written agreement, acceptable to Beneficiary, executed by the holder of the Subordinate Mortgage which provides that (a) the Subordinate Mortgage is and shall at all times remain unconditionally subject and subordinate to this Deed of Trust; (b) if any action or proceeding is commenced to foreclose the Subordinate Mortgage, no Tenant under any Lease shall be named as a defendant in such action or proceeding, nor shall such action or proceeding terminate any Lease, without Beneficiary's prior written consent; (c) all Rents and Profits, whether collected directly by the holder of the Subordinate Mortgage or through a receiver, shall be applied first to the Obligations, second to the payment of the Impositions, and thereafter to payment of maintenance and operating costs relating to the Property; and (d) the holder of the Subordinate Mortgage shall give written notice to Beneficiary not later than ten (10) days prior to commencing any judicial or nonjudicial action or proceeding to foreclose the Subordinate Mortgage. Grantor acknowledges and agrees that Beneficiary's determination as to whether or not to grant its consent to any proposed Subordinate Mortgage shall be based upon, among other things, the debt coverage ratio of the combined Obligations secured by this Deed of Trust and the indebtedness to be secured by such proposed Subordinate Mortgage, in addition to such other factors as Beneficiary, in its sole and absolute discretion, shall determine to be relevant or appropriate.

**2.18 Fixtures.** Notwithstanding Section 2.15 above, Grantor may from time to time replace any Fixtures constituting a part of the Property in the ordinary course of Grantor's business, provided that (a) the replacement property for such Fixtures is at least equivalent in value, character, and quality to the Fixtures being replaced; (b) Grantor has good and marketable title to such replacement property free and clear of all liens, claims, and interests other than the lien of this Deed of Trust; and (c) this Deed of Trust shall constitute a first lien on such replacement Property.

**2.19 Permitted Leasing; Residential Exclusion; Assignment of and Compliance with Leases.** Notwithstanding Section 2.15 above, Grantor shall have the right to enter into Leases in the ordinary course of Grantor's business without Beneficiary's prior written consent, provided that all of the following conditions are satisfied: (a) the term of such Lease, including any extension or renewal options, does not exceed a total of five (5) years and the premises which are the subject of such Lease contain less than twenty percent (20%) of the total rentable square footage of the Improvements; (b) the form

used for such Lease represents a commercially reasonable lease form or has been approved in writing by Beneficiary prior to Grantor's execution of the Lease; (c) the rental and all other charges under such Lease (i) are not more favorable to the Tenant than pro forma rental and other charges which have been approved in writing by Beneficiary not more than six (6) months prior to Grantor's execution of such Lease, and such approval has not been modified or revoked at the time the Lease is executed by Grantor; or (ii) are at the then current fair market rate for comparable space and represent terms agreed upon in a bona fide arm's length lease transaction with a tenant who is not in any way affiliated with Grantor; (d) if such Lease is a commercial lease, it is unconditionally subordinate to this Deed of Trust and contains an attornment provision consistent with Section 2.20 below; (e) no Event of Default has occurred and is continuing at the time of Grantor's execution of such Lease; and (f) , Grantor provides Beneficiary with an accurate and complete copy of such Lease within ten (10) business days after such Lease is executed by Grantor. The foregoing provisions of this Section 2.19 shall not apply to residential Leases. Upon Beneficiary's request, Grantor (i) shall execute, acknowledge and deliver to Beneficiary an absolute and unconditional assignment acceptable to Beneficiary of all of Grantor's interest in all Leases and all guaranties of and security for the Tenants' respective obligations under the Leases, and (ii) shall promptly deliver to Lender a true and complete copy of residential Leases. Grantor shall perform and discharge all obligations of the lessor under the Leases in accordance with the terms thereof and shall diligently enforce all remedies available to Grantor in a commercially reasonable manner in the event of a default by the Tenant under any Lease.

**2.20 Attornment at Beneficiary's Option.** Each Tenant who enters into a Lease for the Property after the date of recordation of this Deed of Trust (each such Lease is referred to as a "Subordinate Lease") and who has not entered into a written non-disturbance and attornment agreement with Beneficiary shall be deemed to have agreed to attorn to Beneficiary and accept Beneficiary as the landlord under its Lease on the terms of this Section. If Beneficiary acquires title to the Property by judicial or nonjudicial foreclosure under this Deed of Trust or by deed in lieu of foreclosure under this Deed of Trust, Beneficiary, at its option, shall have the right to require any or all Tenants under Subordinate Leases to attorn to and accept Beneficiary as the landlord under such Tenant's Subordinate Lease (the "Attornment Option") by giving written notice to such Tenant within thirty (30) days after the date on which Beneficiary acquires title to the Property (the "Acquisition Date"). If Beneficiary exercises the Attornment Option with respect to any Subordinate Lease, such attornment shall be effective and self-operative as of the Acquisition Date without the execution of any further documents on the part of the Tenant, Beneficiary, or any other party, and the Tenant under the Subordinate Lease shall be bound to Beneficiary under all of the terms, covenants, and conditions of the Subordinate Lease for the remaining balance of the term thereof, with the same force and effect as if Beneficiary were the landlord under such Lease. Whether or not Beneficiary exercises its Attornment Option with respect to any Subordinate Lease, Beneficiary (except to the extent required by applicable law) (a) shall not be liable for any act or omission of any prior landlord under any Subordinate Lease, including Grantor; (b) shall not be subject to any offset, defense, or claim which any Tenant may have against any prior landlord under any Subordinate Lease, including Grantor; (c) shall not be obligated (i) to return any security deposit now or hereafter paid by any Tenant; (ii) to return any prepaid rent or other amounts prepaid by any Tenant; or (iii) to grant any Tenant a credit for any such security deposit, prepaid rent or other prepaid amounts (excluding monthly rent and other charges which have not been prepaid for more than one month in advance), except to the extent, if any, that Beneficiary has actually and unconditionally received such security deposit, prepaid rent or other prepaid amounts; and (d) shall not be obligated to complete the construction of any or all Improvements. Without limiting the terms of this Section, upon Beneficiary's request, each Tenant under a Subordinate Lease shall execute and deliver to Beneficiary any document which Beneficiary determines to be necessary or appropriate to evidence such Tenant's attornment to Beneficiary on the terms of this Section, including a new lease with Beneficiary on the same terms and conditions as the Subordinate Lease for a term equal to the unexpired term of the Subordinate Lease. Nothing contained in this Section shall be deemed to obligate Beneficiary to recognize any Subordinate Lease or accept an attornment by any Tenant upon Beneficiary's acquisition of title to the Property. If Beneficiary elects not to exercise the Attornment Option within the time period specified in this Section with respect to any Subordinate Lease, such Subordinate Lease and all of the rights, privileges and powers of the Tenant thereunder shall automatically terminate and shall be of no further force or effect from and after the Acquisition Date.

**2.21 Termination or Modification of Leases.** Without Beneficiary's prior written consent, and except as otherwise expressly permitted by the Loan Documents (including Section 2.22 below), Grantor shall not, (a) terminate, cancel, accept a surrender of, agree to any material modification to, or waive any of Grantor's material rights under any of the Leases, except cancellation of a Lease based on a material default by the Tenant thereunder; (b) collect rent under any of the Leases for more than one (1) month in advance; (c) agree to subordinate any of the Leases to any other Lien; (d) discount the rent or other amounts payable under any of the Leases or release any Tenant or any other party liable for the performance of any Tenant's obligations under any of the Leases; (e) consent to any sublease or to the assignment of all or part of any Tenant's interest under the Leases; or (f) in any other manner impair Beneficiary's rights with respect to or interest in the Rents and Profits. Any attempted termination, cancellation, surrender, modification, or subordination of a Lease in violation of this Section shall be void. Grantor shall give immediate written notice to Beneficiary of (i) any material default by any Tenant under any of the Leases; (ii) any notice received by Grantor from any Tenant under any of the Leases claiming any material default or material breach by Grantor under such Tenant's Lease; and (iii) any other material default by Grantor under any of the Leases of which Grantor is aware. Upon Beneficiary's request, Grantor shall furnish to Beneficiary all material information which Beneficiary may reasonably require regarding Grantor's or any Tenant's performance under any or all of the Leases. The foregoing provisions of this Section 2.21 shall not apply to residential Leases.

**2.22 Permitted Lease Modifications.** Notwithstanding Section 2.20 above, and provided that no Event of Default has occurred and is continuing under the Loan Documents, Grantor shall have the right to enter into a modification, amendment, or supplement to a Lease (referred to collectively as a "Lease Modification") without Beneficiary's prior written consent, provided that (a) the Lease Modification (i) is and at all times remains subordinate to this Deed of Trust; (ii) is not material in nature; (iii) does not affect the rent (including base rent, percentage rent, and common areas charges) payable by the Tenant, term, or any other monetary or economic term of such Lease; (iv) does not modify in any material respect the permitted use of the premises under such Lease; (v) does not change the identity of the Tenant under such Lease; (vi) does not materially increase any obligation of the landlord under such Lease; and (vii) Grantor provides Beneficiary with a complete and accurate copy of the Lease Modification within ten (10) business days after such Lease Modification becomes effective, or (b) the Lease is a residential Lease.

**2.23 Beneficiary's Approval of New Leases and Lease Modifications.** Provided that no Event of Default has occurred and is continuing under the Loan Documents, Beneficiary shall exercise its right to grant or withhold its approval of any proposed new Lease ("New Lease") or Lease Modification which requires Beneficiary's approval under the terms of the Loan Documents in Beneficiary's good faith business judgment. Beneficiary shall give written notice to Grantor of Beneficiary's approval or disapproval of any New Lease or Lease Modification which requires Beneficiary's approval following Beneficiary's receipt of a complete and accurate copy of the New Lease or Lease Modification, as applicable, together with current financial statements for the Tenant thereunder and such other information regarding the New Lease or Lease Modification, as applicable, as Beneficiary reasonably may request in order to enable Beneficiary to make a reasonably informed decision with respect to the New Lease or Lease Modification. Grantor may enter into a New Lease or Lease Modification which requires Beneficiary's approval prior to obtaining such approval, provided that the New Lease or Lease Modification, as applicable, and the Grantor's obligations thereunder are expressly conditioned on Grantor obtaining Beneficiary's approval.

**2.24 Financial Statements; Books and Records; Estoppel Certificates; Management.**

(a) **Financial Statements.** Within ninety (90) days after the close of Grantor's fiscal year, Grantor shall deliver to Beneficiary a balance sheet and a statement of profit and loss for Grantor for such fiscal year. Within ninety (90) days after the close of the fiscal year for (a) each Guarantor; (b) each general partner of Grantor ("General Partner"), if Grantor is a partnership; and (c) each Manager of Grantor, if Grantor is a limited liability company, Grantor shall cause each such Guarantor, General Partner, and Manager to provide Beneficiary with a balance sheet and a statement of profit and loss for such Guarantor, General Partner, and Manager for such fiscal year. Grantor shall cause all financial statements furnished to Beneficiary under this Section to be certified by the party to whom such

statements apply. If Grantor or any Guarantor, General Partner or Manager has audited financial statements prepared, Grantor shall cause a copy of such audited financial statements to be delivered to Beneficiary within thirty (30) days after such statements are received by Grantor or the Person to whom such statements apply. Grantor and each Person whose financial statements are provided to Beneficiary under this Section shall, by submitting such statements to Beneficiary, be conclusively deemed to have certified to Beneficiary, in addition to any other certifications contained in such statements, that the financial statements furnished to Beneficiary (i) are accurate and complete in all material respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the statements apply as of the date and for the period shown in such statements; and (iii) disclose all material suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statements apply. Grantor shall provide Beneficiary with such other information concerning the financial condition and affairs of Grantor, the Guarantors, the General Partners, and Managers as Beneficiary may reasonably require within ten (10) business days after Beneficiary's request for such information. Grantor shall deliver to Beneficiary, or cause to be delivered to Beneficiary, a complete and accurate copy of each federal income tax return filed by Grantor and any Guarantor, General Partner, and Manager within thirty (30) days after the date on which each such return is filed.

(b) **Operating Statements.** If the Property consists of a Commercial Project, within ninety (90) days after the end of each calendar year, and within ten (10) business days after Beneficiary's request from time to time, Grantor shall deliver to Beneficiary an accurate and complete annual operating statement for the Property for the immediately preceding calendar year or twelve (12) month period, as applicable. All such operating statements shall be in a form reasonably acceptable to Beneficiary and shall contain such detail as Beneficiary may require to provide Beneficiary with a complete and accurate statement of all income, receipts, payments, rents, reimbursements, deposits, and other revenues of every kind from the Property and all operating expenses of every kind paid or incurred with respect to the Property, including taxes, insurance, utilities, salaries, wages and personnel costs, leasing costs and commissions, maintenance and repair costs, legal and accounting fees and expenses, advertising and promotion costs, management fees, and expenditures for capital improvements. Each operating statement delivered by Grantor to Beneficiary under this Section shall be signed by Grantor and shall be certified as being accurate and complete by Grantor. At any time after Beneficiary's receipt of any of the operating statements described in this Section or in Section 2.24(e) below, within ten (10) business days after Beneficiary's request, Grantor shall deliver to Beneficiary copies of such invoices, bank statements, canceled checks, and other supporting documentation as Beneficiary may designate to substantiate any or all matters reflected in the operating statements received by Beneficiary.

(c) **Rental Statements.** If the Property consists of a Commercial Project, within ninety (90) days after the end of each calendar year, and within ten business (10) days after Beneficiary's request from time to time, Grantor shall deliver to Beneficiary an accurate and complete rent statement for the Property (the "Rent Statement") as of the last day of the most recent calendar month showing (i) the leasing status of all space in the Buildings, including information as to whether such space is vacant or subject to a Lease; and (ii) with respect to each space in the Buildings that has been leased, [A] the name of the Tenant renting the space; [B] the premises occupied by each of the Tenants; [C] the current monthly rent and all other amounts payable by such Tenant under such Lease; [D] the total amount of all prepaid rent received by Grantor from such Tenant; [E] the total amount of any security deposit or other deposit received by Grantor from such Tenant; [F] the expiration date of the term of such Lease or nature of the tenancy under such Lease; [G] the rent payment dates and the amount of any delinquent rent or other payments owing by such Tenant; [H] extension or renewal options under the Leases; [I] any rent or other concessions granted to, and any claims or offsets asserted by, any Tenants; and [J] such other information as Beneficiary may designate. Each Rent Statement delivered by Grantor to Beneficiary under this Section or Section 2.24(e) below shall be signed by Grantor and shall be certified as being accurate and complete by Grantor.

(d) **Books and Records.** If the Property consists of a Commercial Project, Grantor shall keep and maintain complete and accurate Books and Records at Grantor's principal place of business, and Grantor shall not remove the Books and Records from such location without Beneficiary's prior written consent. Beneficiary shall have access to the Books and Records at all reasonable times



upon reasonable prior notice, which shall not be less than three (3) business days, for the purposes of examination, inspection, verification, copying and for any other reasonable purpose. The Books and Records shall include a complete and accurate record of all costs incurred and payments made in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, and marketing of the Property. If (i) Grantor fails to provide Beneficiary with any annual financial statement or income tax return, annual operating statement, or annual Rent Statement which Grantor is required to deliver to Beneficiary under Sections 2.24(a), 2.24(b) and 2.24(c) above within the required time period; and (ii) Grantor fails to cure such failure within thirty (30) days after the date on which the latter of two separate written notices is given by Beneficiary to Grantor (the second of which shall be given by Beneficiary not sooner than ten (10) days after the date on which the first of such notices is given) notifying Grantor of such failure and of the fact that a late charge in the amount of \$750 will be imposed on Grantor if Grantor fails to cure the failure within the time provided by this Section, then Grantor immediately shall pay to the Beneficiary a late charge in the amount of \$750. Grantor agrees that the actual damages suffered by Beneficiary because of any failure to deliver the information described in the immediately preceding sentence are extremely difficult and impracticable to ascertain, and the late charge described in this Section represents a reasonable attempt to fix such damages under the circumstances existing at the time this Deed of Trust is executed. Beneficiary's acceptance of such late charge shall not constitute a waiver of any breach by Grantor of its obligation to provide the information required by Section 2.24 of this Deed of Trust or any of the other terms of the Loan Documents and shall not affect Beneficiary's right to enforce any of its rights and remedies against Grantor or any other any Person under the Loan Documents.

(e) **Additional Reports and Information.** If the Property consists of a Commercial Project, within ten (10) business days after Beneficiary's request from time to time, Grantor shall deliver to Beneficiary such additional information available to Grantor and reports as Beneficiary may reasonably request concerning the Property and the business and affairs of Grantor or any Guarantor, General Partner, or Manager, including (i) a balance sheet and profit and loss statement for the most recent fiscal year and for the most recent fiscal year-to-date quarterly period or periods of Grantor or any Guarantor, General Partner, or Manager, each of which shall be certified and otherwise prepared in accordance with the requirements of Section 2.24(a) above; (ii) quarterly or monthly operating statements from Grantor for the Property for each calendar quarter or month containing the same detailed information required to be included in the operating statements described in Section 2.24(b) above; (iii) quarterly or monthly Rent Statements from Grantor for the Property for each calendar quarter or month containing the same detailed information required to be included in the Rent Statements described in Section 2.24(c) above; (iv) copies of all financial statements and reports that Grantor sends to its partners or shareholders, if any; (v) copies of all reports which are available for public inspection or which Grantor is required to file with any Governmental Authorities; (vi) a certificate executed by Grantor, dated within ten (10) business days of the date of delivery of such certificate to Beneficiary, stating that Grantor knows of no Event of Default under the Loan Documents or, if an Event of Default exists, stating the nature of the default and what action Grantor has taken or proposes to take with respect to such Event of Default; (vii) complete and accurate as-built plans for all Buildings located on the Land, if to the extent such plans are in Grantor's possession or control; (viii) complete and accurate copies of all Leases and any currently effective letters of intent or proposals to lease all or part of the Property received or made by or behalf of Grantor; and (ix) the most recent years' federal income tax returns for Grantor or any Guarantor, General Partner, or Manager. All financial statements that are required to be provided to Beneficiary under this Section 2.24 shall be on Beneficiary's standard form of financial statement or on such other form as may be reasonably acceptable to Beneficiary. Beneficiary may exercise its rights to require additional reports and information under this Section at any time and from time to time on such periodic basis as Beneficiary reasonably shall determine to be necessary or appropriate, including annual requests on the anniversary of the date of recordation of this Deed of Trust.

(f) **Notice of Certain Matters.** Grantor shall promptly notify Beneficiary in writing of (i) any claim, demand, right, or Lien relating to the Property which may be adverse to the lien of this Deed of Trust; (ii) any material loss, depreciation, or adverse change in the value of the Property and any other occurrence which may materially and adversely affect Beneficiary's lien on the Property; (iii) any material adverse change in Grantor's ability to perform any or all of the Obligations; (iv) any event or

condition which constitutes an Event of Default; and (v) any dispute between Grantor and any Governmental Authority relating to the Property which may have a material adverse effect on the Property.

(g) **Estoppel Certificates.** Within ten (10) business days after Beneficiary's request, Grantor shall deliver to Beneficiary a written statement signed and acknowledged by Grantor and certified by Grantor to be accurate stating (i) the original principal amount of the Note; (ii) the unpaid principal balance of the Note and the amount of all other monetary Obligations secured by this Deed of Trust; (iii) the rate of interest on the unpaid principal balance of the Note; (iv) the terms of payment and maturity date of the Note; (v) the date installments of interest, principal, or both principal and interest were last paid; (vi) that, except as specifically provided in such statement, there are no defaults by Grantor under the Loan Documents or events which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Loan Documents; (vii) that the Loan Documents are valid, legal and binding obligations of Grantor and have not been modified (or if modified, stating the specific terms of such modification); (viii) whether Grantor contends that any offsets or defenses exist against the Obligations secured by this Deed of Trust and whether Grantor has any claims of any kind against Beneficiary and, if so, a detailed description of such offsets, defenses, and claims; (ix) that all Leases affecting the Property identified in a current Rent Statement are in full force and effect (or if any of such Leases is not in full force, stating the basis on which the Lease has been terminated or cancelled); (x) the date to which the rents have been paid pursuant to all Leases affecting the Property; (xi) whether or not, to the best of Grantor's knowledge, any of the Tenants under the Leases affecting the Property are in default under such Leases and, if any of Tenants is in default, setting forth the specific nature of all such defaults; (xii) the amount of security deposits held by Grantor under each Lease affecting the Property and that such amount is consistent with the amounts required under each Lease; and (xiii) such other information with respect to the Obligations, the Loan Documents, the Property, or the Leases as Beneficiary may reasonably require, including evidence acceptable to Beneficiary of Grantor's compliance with any of the terms of the Loan Documents which are specifically identified in Beneficiary's request. With respect to all statements, information and reports that Grantor submits to Beneficiary pursuant to this Deed of Trust, including pursuant to this Section 2.24, Grantor shall be deemed conclusively to have certified to Beneficiary, whether or not such statements, information or reports have been signed by Grantor, that [A] such statements, information and reports are accurate and complete in all material respects as of the date or for such periods as may be shown in the statements, information, and reports; and [B] such statements, information, and reports do not omit to state any facts or other information so as to make the statements, information, or reports submitted to Beneficiary misleading in any material respect.

(h) **Management.** The Property shall be managed by either (a) Grantor or an entity affiliated with Grantor who has been approved by Beneficiary, provided that the Beneficiary determines that Grantor or such affiliated entity is at all times managing the Property in accordance with good quality and generally accepted management practices for properties similar to the Property; or (b) a professional property management company acceptable to Beneficiary. If the Property is managed by an entity affiliated with Grantor or a professional property management company, such management shall be pursuant to a written management agreement acceptable to Beneficiary.

**2.25 Inspection.** Beneficiary shall have the right at all reasonable times (a) upon reasonable prior written or telephonic notice (except that no such notice shall be required in the case of an emergency or any inspection limited to the public areas or common areas of the Property) to enter upon and inspect the Property, including any entry which Beneficiary determines is necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Beneficiary under the Loan Documents; (b) to contact any Person to verify any information provided or disclosed by Grantor to Beneficiary; and (c) to release such information regarding the Property, Grantor, or the Obligations as Beneficiary may determine to be necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Beneficiary under the Loan Documents. Beneficiary shall have no obligation or duty to inspect the Property or the Books and Records, and all such inspections by Beneficiary shall be for Beneficiary's sole benefit and not for the benefit of Grantor or any other Person.

**2.26 Defense of Actions and Protection of Security by Grantor.** Grantor shall appear in and defend any action or proceeding commenced by any Person other than Beneficiary which affects or which Beneficiary determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Beneficiary's, Trustee's or Grantor's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Beneficiary by reason of its interest in the Property. Grantor shall promptly commence and diligently prosecute all actions and proceedings which are necessary or appropriate or which Beneficiary determines may be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds; or (iii) to preserve, protect, maintain, and defend the Property and Beneficiary's lien thereon.

**2.27 Leasehold Estates.** The following provisions in this Section 2.27 shall apply only if this Deed of Trust encumbers a Ground Lease:

(a) **Grantor's Obligations under Ground Lease.** If this Deed of Trust encumbers a Ground Lease, Grantor (i) shall perform all obligations of the tenant under the Ground Lease and shall not permit or suffer any default by Grantor under the terms of the Ground Lease; (ii) shall not amend, modify, terminate, cancel, or surrender its interest in the Ground Lease without Beneficiary's prior written consent; (iii) shall give immediate written notice to Beneficiary of [1] any default by the landlord under the Ground Lease (the "Lessor"); [2] any notice received by Grantor from the Lessor of any default by Grantor under the Ground Lease; and [3] any other default by Grantor under the Ground Lease of which Grantor is aware; and (iv) shall furnish to Beneficiary all information which Beneficiary may require regarding Grantor's performance under the Ground Lease.

(b) **Leasehold Estate.** Whenever the context of this Deed of Trust so requires, the term Property shall be deemed to include the leasehold estate under the Ground Lease and any other interest of Grantor in the real property which is the subject of the Ground Lease.

(c) **Acquisition of Title.** If Grantor shall, directly or indirectly, acquire fee title or any other estate or interest in the real property which is the subject of the Ground Lease, this Deed of Trust shall attach to and encumber such fee title or other estate or interest without further action by Grantor, Trustee or Beneficiary.

(d) **No Merger.** There shall be no merger of the leasehold estate arising under the Ground Lease with all or any portion of the fee estate in the real property which is the subject of the Ground Lease by reason of the fact that such leasehold estate may be held by any Person who shall hold all or any portion of such fee estate in the real property which is the subject of the Ground Lease, unless Beneficiary shall expressly agree otherwise in writing.

(e) **Cure Rights.** If Grantor fails to perform any of its obligations as tenant under the Ground Lease, Beneficiary shall have the right to pay or perform any or all of such obligations in such manner and to such extent as Beneficiary determines to be necessary or appropriate to preserve or protect the security for the Obligations. All costs and expenses, including without limitation attorneys' fees incurred by Beneficiary in connection with the payment or performance of such obligations shall be payable by Grantor to Beneficiary on Beneficiary's demand, shall bear interest at the rate specified in the Note from the date of expenditure, and shall be deemed to be secured by this Deed of Trust and all other agreements given by Grantor to secure the Note. Nothing contained in this Deed of Trust shall be construed to obligate Beneficiary to pay or perform any of Grantor's obligations under the Ground Lease, and no election by Beneficiary to pay or perform such obligations shall constitute a waiver of any default by Grantor under this Deed of Trust.

**2.28 Enforcement of Covenants and Restrictions.** If any of the Covenants and Restrictions apply to Persons owning or occupying real property which is adjacent to or in the vicinity of the Property, Grantor shall diligently enforce the Covenants and Restrictions against such Persons if

(a) such Persons have breached their obligations under the Covenants and Restrictions; and (b) such breach has not been cured by such Persons within ninety (90) days after a request by Beneficiary to Grantor to enforce the Covenants and Restrictions.

**2.29 Appraisals.** Upon receipt of written notice from Beneficiary that either Beneficiary or a federal or state regulatory agency having jurisdiction over Beneficiary reasonably believes that the fair market value of the Property may have substantially declined since the date of Beneficiary's last appraisal of the Property, Grantor shall obtain, as promptly as possible and at Grantor's expense, an updated appraisal of the Property, in form and substance satisfactory to Beneficiary and such regulatory agency from an appraiser satisfactory to Beneficiary in its sole discretion.

**2.30 Agricultural Property.** If the Property consists in whole or in part of agricultural property, Grantor (a) shall farm the same using good and proper practices of husbandry; (b) shall keep all crops, trees and vines on the Property properly cultivated, irrigated, fertilized, sprayed, fumigated and maintained; and (c) shall promptly replace all dead or unproductive crops, trees or vines.

**2.31 Further Assurances.** Upon Beneficiary's request, Grantor shall execute, acknowledge and deliver to Beneficiary such further documents and agreements and take such further actions as Beneficiary may reasonably require from time to time to effectuate or carry out the purposes of the Loan Documents or to evidence, perfect, maintain, preserve or protect Beneficiary's lien on the Property, including Grantor's execution of security agreements, assignments, financing statements, and continuation financing statements. Upon Beneficiary's request, Grantor shall execute, acknowledge and deliver to Beneficiary an assignment acceptable to Beneficiary of such additional rights, privileges, Governmental Permits, and documents relating to the Property as Beneficiary may reasonably determine to be necessary or appropriate in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

**2.32 Non-Residential Trust Deed; Business Purpose.** Grantor warrants that this Deed of Trust is not and will not at any time constitute a residential trust deed, as that term is defined in ORS 86.705 or its successor statutes. Grantor warrants that it is engaging in this transaction exclusively for business, commercial or investment purposes.

**2.33 Compliance with Controlled Substances Laws.**

(a) Grantor shall not enter into, consent to or permit any lease, sublease, license or other agreement relating to, or otherwise permit the use or occupancy of, the Property for a Controlled Substances Use or in any manner that violates or could violate any Controlled Substances Laws, including, without limitation, any business, communications, financial transactions or other activities related to Controlled Substances or a Controlled Substance Use that violate or could violate any Controlled Substances Laws (collectively, "Drug-Related Activities").

(b) Grantor shall not engage in any Drug-Related Activities. Grantor shall not make any payments to Beneficiary from funds derived from Drug-Related Activities.

(c) Grantor shall provide to Beneficiary, from time to time, within ten (10 ) days after Beneficiary's request therefor, any information that Beneficiary reasonably requests, relating to compliance with this Section.

(d) Grantor shall include in all leases and other agreements for use and occupancy of the Property, provisions that (i) prohibit any Controlled Substance Use or Drug-Related Activities on the Property and (ii) permit the Beneficiary to make physical inspections of the Property upon the request of the Beneficiary.

(e) The provisions of this Section shall apply notwithstanding any state or local law permitting the Controlled Substances Use or Drug-Related Activities.

(f) Notwithstanding any provision in any Loan Document to the contrary, no direct or indirect disclosure by Grantor to Beneficiary or any person affiliated with Beneficiary, and no knowledge of the Beneficiary or any person affiliated with the Beneficiary, of the existence of any Drug-Related Activities or Controlled Substance Use on, in or about the Property shall estop Beneficiary or waive any right of Beneficiary to invoke any remedy under the Loan Documents for violation of any provision hereof related to the prohibition of any Drug-Related Activities or Controlled Substance Use on, in or about the Property. The foregoing shall apply notwithstanding the receipt or execution of an Estoppel Certificate or a Subordination, Non-Disturbance, or Attornment Agreement or other document from or with any tenant of Grantor engaged in such prohibited activity.

### **ARTICLE 3**

#### **EVENTS OF DEFAULT**

Beneficiary, at its option, shall have the right to declare Grantor to be in default under this Deed of Trust and the other Loan Documents upon the occurrence of any or all of the following events:

**3.1 Payment of Note and Other Monetary Obligations Under Loan Documents.** If Grantor fails to pay any of its indebtedness under the Note or perform any of its other obligations under the Loan Documents requiring the payment of money to Beneficiary or any third Person within ten (10) days after the date on which such indebtedness or monetary obligation is due; provided, however, that the ten (10) day grace period contained in this Section 3.1 shall not apply to Grantor's obligation to pay the outstanding principal balance and all accrued but unpaid interest under the Note on the stated maturity date of the Note;

**3.2 Performance of Non-Monetary Obligations Under Other Loan Documents.** If Grantor breaches or otherwise fails to perform any of its non-monetary obligations to Beneficiary or any third Person under any of the Loan Documents when due;

**3.3 Other Agreements with Beneficiary.** If Grantor fails to pay any of its indebtedness or to perform any of its obligations under any document between the Grantor and Beneficiary (other than the Loan Documents) when due;

**3.4 Misrepresentation.** If any request, statement, information, certification, or representation, whether written or oral, submitted or made by Grantor to Beneficiary in connection with the Loan or any other extension of credit by Beneficiary to Grantor is false or misleading in any material respect;

**3.5 Insolvency of Grantor.** If (a) a petition is filed by or against Grantor under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency or similar law; (b) a receiver, liquidator, trustee, custodian, sequestrator, or other similar official is appointed to take possession of Grantor or the Property, or Grantor consents to such appointment; (c) Grantor makes an assignment for the benefit of creditors; (d) Grantor takes any action in furtherance of any of the foregoing; or (e) there is a material adverse change in Grantor's financial condition as represented to Beneficiary in connection with Beneficiary's approval of the Loan and Beneficiary reasonably determines that such change materially impairs Grantor's ability to perform any or all of the Obligations; provided, however, that Grantor shall have thirty (30) days within which to cause any involuntary bankruptcy proceeding to be dismissed or the involuntary appointment of any receiver, liquidator, trustee, custodian, or sequestrator to be discharged. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure provisions contained in the Loan Documents;

**3.6 Insolvency of Other Persons.** If any of the events specified in parts (a) through (e) of Section 3.5 above occurs with respect to (a) any General Partner of Grantor, if Grantor is a partnership; (b) any of the Guarantors; or (c) any Manager of Grantor, if Grantor is a limited liability company;

**3.7 Performance of Obligations to Senior Lien Holders or Third Persons.** If (i) Grantor fails to pay any of its indebtedness or to perform any of its obligations under any agreement between Grantor and any other Person who holds a Lien senior to this Deed of Trust when due; or (ii) Grantor fails to pay any of its indebtedness or to perform any of its obligations when due under any other material document between Grantor and any other Person. Nothing contained in this Section constitutes or shall be construed as Beneficiary's consent to any Lien being placed on the Property which is senior to the lien of this Deed of Trust;

**3.8 Attachment.** If all or any material part of the assets of Grantor, any of the Guarantors, or any General Partner or Manager of Grantor are attached, seized, subjected to a writ or levied upon by any court process and Grantor fails to cause such attachment, seizure, writ or levy to be fully released or removed within sixty (60) days after the occurrence of such event. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

**3.9 Injunctions.** If a court order is entered against Grantor, any of the Guarantors, or any General Partner or Manager of Grantor enjoining the conduct of all or part of such Person's business and Grantor fails to cause such injunction to be fully stayed, dissolved or removed within sixty (60) days after such order is entered. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

**3.10 Dissolution.** If Grantor, any of the Guarantors, or any General Partner or Manager of Grantor is a corporation, partnership, limited liability company or trust, the dissolution, liquidation, or termination of existence of such Person;

**3.11 Transfers of Partnership Interests.** If Grantor is a partnership (a) the admission, withdrawal, death, retirement, or removal of any General Partner of Grantor; (b) the sale or transfer of an aggregate of more than twenty-five percent (25%) of the beneficial interests in Grantor; or (c) Beneficiary's receipt of any conflicting written instructions or written demands relating to the Loan from any partners of Grantor which Beneficiary reasonably determines have a material adverse effect on Beneficiary's ability to service or administer the Loan;

**3.12 Transfers of Corporate Ownership.** If Grantor is a corporation, the sale or transfer of an aggregate of more than twenty-five percent (25%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust;

**3.13 Transfer of Manager's Interests.** If Grantor is a limited liability company, (a) the appointment, withdrawal, death, retirement or removal of any Manager of Grantor; (b) the sale or transfer of an aggregate of more than twenty-five percent (25%) of the beneficial interests of Grantor; or (c) Beneficiary's receipt of any conflicting written instructions or written demands relating to the Loan from any members of Grantor which Beneficiary reasonably determines have a material adverse effect on Beneficiary's ability to service or administer the Loan;

**3.14 Death; Incompetency.** If Grantor, any of the Guarantors, or any General Partner or Manager of Grantor is an individual, the death or incompetency of such Person, except where applicable law limits or prohibits Beneficiary's declaration of a default based on such occurrences; provided, however, that Beneficiary shall not declare an Event of Default to exist based solely on the death or mental incompetence of any individual Guarantor, General Partner, or Manager if, within ninety (90) days after the occurrence of such event, (a) in the case of the death or mental incompetence of a Guarantor, Grantor causes a substitute guarantor to execute and deliver to Beneficiary a continuing guaranty in the form previously executed by the affected Guarantor, and Beneficiary in good faith determines that such substitute guarantor's financial condition is comparable to that of the affected Guarantor and that such substitute Guarantor is otherwise reasonably acceptable to Beneficiary; and (b) in the case of the death or mental incompetence of a General Partner or Manager, Grantor causes a substitute general partner or manager, as applicable, to be admitted to Grantor or appointed, and Beneficiary in good faith determines

that the financial condition, credit history, character, experience, ability and expertise of such substitute general partner or manager are comparable to the affected General Partner or Manager and that such substitute general partner or manager is otherwise acceptable to Beneficiary;

**3.15 Impairment of Priority.** If (i) the priority of this Deed of Trust or Beneficiary's security interest under any of the other agreements securing any or all of the Obligations is impaired for any reason; or (ii) the value of the Property has deteriorated, declined or depreciated as a result of any intentional tortious act or omission by Grantor;

**3.16 Condemnation.** If all or any material part of the Property is transferred to any Governmental Authority as a result of any condemnation proceeding or action with respect to all or any material part of the Property;

**3.17 Failure to Repair Casualty.** If there is an uninsured casualty with respect to the Property, and Grantor (a) fails to commence repairs and reconstruction of the Property within ninety (90) days after such damage; or (b) thereafter fails to diligently prosecute such repairs and reconstruction to completion;

**3.18 Transfers of Property.** If any of the events described in Section 2.15 above occurs without Beneficiary's prior written consent;

**3.19 Default by Guarantors.** If any Guarantor fails to pay any of its indebtedness or perform any of its obligations under any Guaranty for the benefit of Beneficiary or under any other guaranty for the benefit of a third party when due or the revocation, limitation or termination or attempted revocation, limitation or termination of any of the obligations of any Guarantor under any Guaranty with Beneficiary, except in accordance with the express written terms of such Guaranty.

**3.20 Misrepresentation by Guarantors.** If any request, statement, information, certification, or representation, whether written or oral, submitted or made by any Guarantor to Beneficiary in connection with the Loan or any other extension of credit by Beneficiary to Grantor or such Guarantor is false or misleading in any material respect; or

## **ARTICLE 4**

### **REMEDIES**

Upon Beneficiary's election to declare Grantor to be in default under this Deed of Trust and the other Loan Documents pursuant to Article 3 above, Grantor shall be deemed to be in default under this Deed of Trust and the other Loan Documents, and Beneficiary shall have the following rights and remedies:

**4.1 Acceleration.** Beneficiary shall have the right to declare any or all of the Obligations to be immediately due and payable, including the entire principal amount and all accrued but unpaid interest under the Note and all Future Advances, and notwithstanding the stated maturity of the Note or any Future Advances, such Obligations shall thereupon be immediately due and payable.

**4.2 Entry by Beneficiary.** Whether or not Beneficiary elects to accelerate any or all of the Obligations under Section 4.1 above, Beneficiary shall have the right (a) to enter, take possession of, and manage, operate and lease the Property; (b) to take possession of any or all Books and Records; (c) to collect any or all Rents and Profits, whether or not Beneficiary has taken possession of the Property; and (d) to take any or all actions which Beneficiary determines to be necessary or appropriate in connection therewith or to preserve, protect, maintain and defend the Property and Beneficiary's lien thereon, including (i) the exercise and enforcement of all of Grantor's rights under any or all of the Leases; (ii) the termination, acceptance of a surrender, modification or amendment of any or all of the Leases; (iii) the execution of new Leases on such terms and conditions as Beneficiary determines to be appropriate; and

(iv) the repair, alteration, improvement or completion of the Property in such manner and to such extent as Beneficiary determines to be necessary or appropriate. If Beneficiary elects to take possession of the Property or to take any or all of the other actions described in this Section by court process, Grantor irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose pursuant to Section 4.6 below.

**4.3 Judicial Action.** Beneficiary shall have the right to commence an action or proceeding to foreclose this Deed of Trust and to enforce any or all of the terms of the Loan Documents, including specific performance of the covenants of Grantor under this Deed of Trust.

**4.4 Foreclosure by Advertisement and Sale.**

(a) **Declaration and Notice of Default.** Beneficiary shall have the right (i) to cause the Deed of Trust to be foreclosed by advertisement and sale in accordance with applicable law; and (ii) to deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause the Property to be sold, which notice the Trustee or Beneficiary shall cause to be recorded as required by law. Upon the expiration of such period of time after the recordation of such notice of default and election to sell and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified in the notice of sale, shall sell the Property at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale.

(b) **Postponements; Multiple Parcels.** To the extent permitted by law, Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement at the time and place noticed for such sale or may, in its discretion, give a new notice of sale. If the Property consists of several lots, parcels or items of property, Beneficiary shall have the exclusive right (i) to designate the order in which such lots, parcels or items shall be offered for sale or sold; and (ii) to elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner Beneficiary determines to be in its best interest. Any Person, including Grantor, Trustee and Beneficiary, may purchase at any sale under this Deed of Trust, and Beneficiary shall have the right to purchase at any such sale by crediting upon the bid price the amount of all or any part of the Obligations. If Beneficiary determines to sell the Property in more than one sale, Beneficiary may, at its option, cause such sales of the Property to be conducted simultaneously or successively, on the same day or on such different days or times and in such order as Beneficiary may determine, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property that has not been sold until all Obligations have been paid in full.

(c) **Costs of Sale; Deed to Purchaser.** Grantor shall pay all costs, fees, and expenses of all sales of the Property under this Deed of Trust, including the costs, fees, and expenses (including attorneys' fees) of Trustee and Beneficiary, together with interest thereon at the interest rate applicable to principal under the Note or, with respect to Trustee, the maximum rate permitted by law to be charged by Trustee. Upon any sale under the power of sale contained in this Deed of Trust, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied. The recitals in any such deed or deeds of any matter or facts, including the existence of any default by Grantor, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or sales, shall be conclusive proof of the truth of such facts and matters, and any such deed or deeds shall be conclusive against all Persons as to such facts and matters recited therein. A sale of less than all of the Property or any defective or irregular sale under this Deed of Trust shall not exhaust, impair or otherwise affect the power of sale contained in this Deed of Trust, and subsequent sales of the Property may be made under this Deed of Trust until all Obligations have been satisfied or until the entire Property has been sold without defect or irregularity.

**4.5 Application of Sale Proceeds.** Trustee shall apply the proceeds of the sale or sales conducted by Trustee in the following order of priority: (a) first, to payment of all expenses of such sale or sales and all costs, expenses, fees, and liabilities of Trustee and this trust, including attorneys' fees, costs of a trustee's sale guaranty, costs of other evidence of title, and Trustee's fees in connection with such



sale or sales; (b) second, to all amounts advanced by Trustee or Beneficiary under any of the terms of this Deed of Trust which have not then been repaid, together with interest thereon at the rate applicable to principal under the Note or, with respect to Trustee, the maximum rate permitted by law to be charged by Trustee; (c) third, to the payment of all other Obligations in such order and amounts as Beneficiary determines; and (d) the remainder, if any, to the Person or Persons legally entitled thereto.

**4.6 Appointment of a Receiver.** Beneficiary shall have the absolute and unconditional right to apply to any court having jurisdiction and obtain the appointment of a receiver or receivers of the Property, and Grantor irrevocably and unconditionally consents to such appointment and agrees that Beneficiary shall have the right to obtain such appointment (a) without notice to Grantor or any other Person; (b) without regard to the value of the Property or any other collateral securing the Obligations; and (c) without acceleration of the Obligations or commencement of foreclosure proceedings under this Deed of Trust. Any such receiver or receivers shall have the usual powers and duties of receivers in similar cases and all powers and duties necessary or appropriate to exercise the rights of Beneficiary as provided in this Deed of Trust.

**4.7 Protection of Beneficiary's Security.** Beneficiary or Trustee, without obligation to do so and without notice to or demand on Grantor, and without releasing Grantor from any of its Obligations or waiving Beneficiary's rights under the Loan Documents, shall have the right to perform any Obligation which Grantor has breached in such manner, at such time, and to such extent as Beneficiary or Trustee determines to be necessary or appropriate to preserve, protect, maintain and defend the Property and Beneficiary's lien thereon.

**4.8 Assembly of Property.** Upon Beneficiary's request, Grantor shall assemble and make available to Beneficiary at the location of the Land all Property which has been removed from or which is not located on the Land.

**4.9 Discontinuation of Disbursements Under Loan and Advances under Other Extensions of Credit.** Beneficiary shall have the (a) right to discontinue or withhold any or all disbursements of the proceeds of the Loan and any Future Advances; and (b) to discontinue advancing money or extending credit to or for the benefit of Grantor in connection with any other document between Beneficiary and Grantor.

**4.10 Rescission of Notice of Default.** Prior to the conduct of any sale under the power of sale contained in this Deed of Trust, Beneficiary, at its option, shall have the right to rescind any notice of default and election to sell the Property by delivering to Trustee a written notice of rescission executed by Beneficiary which, when recorded, shall cancel the foreclosure proceedings which have been commenced by the recordation of such notice of default and election to sell. Beneficiary's rescission of any notice of default and election to sell pursuant to this Section or under applicable law shall not constitute or be construed as a waiver of any Event of Default or impair, prejudice or otherwise affect (a) Beneficiary's right to record a new notice of default and election to sell the Property based on the same or any other Event of Default; or (b) Beneficiary's rights and remedies in connection with the Obligations.

**4.11 Easements.** Without limiting the effect of any right or remedy exercised by Beneficiary under the Loan Documents, any Easements granted by Grantor or other agreement made by Grantor in violation of any of the terms of this Deed of Trust shall, at the option of any purchaser at any judicial or nonjudicial foreclosure sale under this Deed of Trust, be voidable, and any such purchaser shall have the right to take possession of the Property free from the terms of such Easement or agreement.

**4.12 Exercise of Rights Under Other Loan Documents.** Beneficiary shall have the right to exercise any or all rights and remedies which Beneficiary may have under any or all of the other Loan Documents and applicable law.

## **ARTICLE 5**

### **WARRANTIES AND REPRESENTATIONS**

5.1 **Warranties and Representations.** As a material inducement to Beneficiary's extension of credit to Grantor in connection with the Loan, Grantor warrants and represents to Beneficiary as follows:

- (a) **Corporate Existence.** If Grantor is a corporation, Grantor is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and Grantor is qualified to do business and is in good standing under the laws of the state in which the Property is located.
- (b) **Partnership or Limited Liability Company Existence.** If Grantor is a partnership or limited liability company, Grantor is duly organized, validly existing and in good standing under the laws of the state in which Grantor is organized, and Grantor is qualified to do business and is in good standing under the laws of the state in which the Property is located.
- (c) **Existence of Trust.** If Grantor is a trust, Grantor is duly organized and validly existing, and the trustees of Grantor are qualified to act in such capacity.
- (d) **Authority.** Grantor has the full power and authority to carry on its business and to enter into and perform all of its obligations under the Loan Documents, and the Loan Documents, when executed by the Persons signing this Deed of Trust on behalf of Grantor, shall constitute legal, valid and binding obligations of Grantor enforceable in accordance with their respective terms. The Persons executing this Deed of Trust on behalf of Grantor are duly authorized to execute the Loan Documents and all other documents required by Beneficiary in connection with the Loan on behalf of Grantor. No consent of any other Person and no consent, approval, authorization or other action by or filing with any Governmental Authorities is required in connection with the execution, delivery and performance of Grantor's obligations under the Loan Documents.
- (e) **No Violations.** The consummation of the transactions contemplated by the Loan Documents and the performance of Grantor's obligations thereunder will not result in a breach or violation of (i) any Governmental Requirements of any Governmental Authorities or any judgment, writ, injunction, decree or order of any court relating to Grantor or the Property; (ii) any mortgage, agreement, commitment, restriction, or other document to which Grantor is a party or by which Grantor or the Property is bound; (iii) Grantor's agreement or certificate of limited partnership, if Grantor is a limited partnership; (iv) Grantor's agreement or statement of partnership, if Grantor is a general partnership; (v) Grantor's articles of incorporation or bylaws, if Grantor is a corporation; (vi) Grantor's trust agreement, if Grantor is a trust; or (vii) Grantor's articles of organization or operating agreement, if Grantor is a limited liability company.
- (f) **Utilities.** All utility services necessary for the use and occupancy of the Property, including water, storm drains, sewers, gas, electric and telephone facilities, are either available at the boundaries of the Real Property or, if this Deed of Trust secures a construction loan, Grantor has taken all necessary steps to assure that all such utility services will be available upon completion of the Improvements.
- (g) **Access.** All public streets and rights of way necessary for the use and occupancy of the Property have been completed or, if this Deed of Trust secures a construction loan, Grantor has taken all necessary steps to assure that such public streets and rights of way shall be completed upon completion of the Improvements.
- (h) **Governmental Restrictions.** To the best of Grantor's knowledge, there are no conditions or restrictions affecting the use or development of the Property and no agreements or

contracts with any Governmental Authorities, including local, regional, state, or federal governmental authorities, affecting the use or development of the Property which have not been disclosed in writing by Grantor to Beneficiary.

(l) **Litigation.** To the best of Grantor's knowledge, there are no actions, suits, proceedings or investigations pending or threatened against or affecting Grantor or the Property in any court or before any other Governmental Authorities, nor does Grantor know of any basis for any such action, suit, proceeding or investigation.

(j) **Ownership.** Upon recordation of this Deed of Trust, Grantor will be the sole legal and beneficial owner of, and will have good and marketable title to, the Property and all other collateral which is the subject of the Loan Documents.

(k) **Liens.** To the best of Grantor's knowledge, there are no Liens, claims, encroachments, Covenants and Restrictions, Leases, Easements, or other rights affecting the Property which would not be disclosed by a customary search of the records relating to the Land of the county recorder for the county in which the Property is located, except for such matters as have been specifically disclosed by Grantor to and approved in writing by Beneficiary prior to the date of recordation of this Deed of Trust.

(l) **Condemnation.** To the best of Grantor's knowledge, there is no condemnation, zoning change, or other proceeding or action pending, threatened or contemplated by any Governmental Authority which would in any way affect the Property.

(m) **Repair Orders.** To the best of Grantor's knowledge, no orders or directives have been issued by any Governmental Authorities requiring that any work of repair, maintenance or improvement be performed with respect to the Property.

(n) **Transfers.** Grantor has not sold, transferred, leased or encumbered the Property or entered into any agreement for the sale, transfer, lease or encumbrance of the Property, except as described in the Loan Documents.

(o) **No Affiliation With Tenants.** Neither (i) Grantor; (ii) any General Partner or Manager of Grantor, if Grantor is a partnership or limited liability company, (iii) any shareholder in Grantor, if Grantor is a corporation; or (iv) any Guarantors have any direct or indirect financial or other interest in any Tenant, except for such interests as have been specifically disclosed to and approved in writing by Beneficiary prior to the date of recordation of this Deed of Trust.

(p) **Financial Statements.** All statements respecting the financial condition of Grantor, any General Partner or Manager of Grantor, and any Guarantors which have been furnished to Beneficiary (i) are accurate and complete in all material respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the financial statement applies as of the dates and for the periods shown on such statements; and (iii) disclose all suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statement applies. Since the last date covered by such financial statements, there has been no material adverse change in the financial condition of the Persons to whom such statements apply.

(q) **Other Financing.** As of the date of recordation of this Deed of Trust, no other financing for the Property will be in effect or encumber the Property, except such subordinate financing as has been specifically disclosed to and approved in writing by Beneficiary prior to the date of recordation of this Deed of Trust.

(r) **Commissions.** Grantor has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other similar sum in connection with the consummation of the transactions contemplated by the Loan Documents, except for such commissions

as have been specifically disclosed to and approved in writing by Beneficiary prior to the date of recordation of this Deed of Trust.

**5.2 Continuing Warranties and Representations.** The warranties and representations contained in this Article 5 shall be true and correct as of the date of recordation of this Deed of Trust, shall survive the closing of the Loan, and shall remain true and correct as of the date on which such warranties and representations are given. For purposes of this Deed of Trust, the term "to the best of Grantor's knowledge" shall be deemed to the best knowledge of Grantor after a commercially reasonable and diligent investigation, inspection and inquiry by Grantor.

## **ARTICLE 6**

### **MISCELLANEOUS**

**6.1 Beneficiary Statement; Certain Charges.** With respect to (a) any statement, accounting, or similar information requested by Grantor or any other Person under any provision of applicable law; or (b) any other document furnished to Grantor or any other Person by Beneficiary at Grantor's request, Beneficiary shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Beneficiary's customary charge for providing such statement, accounting, or other information. Grantor shall pay Beneficiary its customary charge for any other service rendered by Beneficiary in connection with the Loan or the Property, including the issuance of a request for full or partial reconveyance of this Deed of Trust, transmitting Loan proceeds to an escrow holder and changing Beneficiary's records relating to the Obligations.

**6.2 Reconveyance.** Upon (a) Beneficiary's written request stating that all Obligations secured by this Deed of Trust have been paid or performed in full; (b) surrender to Trustee of this Deed of Trust, the Note and all other documents evidencing the indebtedness secured by this Deed of Trust; and (c) payment of Trustee's fees and expenses of this trust, Trustee shall reconvey the Property then held under this Deed of Trust without warranty of any kind. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as the "person or persons legally entitled thereto". Such reconveyance shall operate as a reassignment of the Rents and Profits assigned to Beneficiary under this Deed of Trust. Unless Trustee is directed by Beneficiary to retain such documents for a longer period of time, Trustee may destroy this Deed of Trust and the Note five (5) years after issuance of the full reconveyance; provided, however, that Trustee, in its sole discretion or as otherwise required by law, may deliver this Deed of Trust and the Note after full reconveyance to the Person or Persons legally entitled thereto.

**6.3 Substitution of Trustee.** Beneficiary, at its option, shall have the right from time to time to appoint a successor trustee to any trustee appointed under this Deed of Trust by Beneficiary's execution and acknowledgment of a written instrument which is recorded in the office of the recorder of each county in which the Property is located. The recordation of such an instrument in accordance with this Section shall constitute conclusive proof of the proper substitution of a successor trustee under this Deed of Trust. Upon recordation of such an instrument, the successor trustee shall succeed to all the title, power and duties granted to the Trustee under this Deed of Trust and by applicable law without conveyance of the Property. Such instrument shall contain the name of the original Beneficiary, Trustee and Grantor named in this Deed of Trust, the book and page or other recording information for this Deed of Trust, and the name and address of the successor trustee. If a notice of default has been recorded prior to the recordation of a substitution of trustee, the power of substitution shall not be exercised by Beneficiary until the costs, fees and expenses of the acting trustee have been paid in full and the acting trustee has endorsed acknowledgment of receipt of such amounts on the instrument substituting the successor trustee. Without limiting the terms of this Section, Beneficiary shall have the right from time to time to substitute a successor to any trustee appointed under this Deed of Trust in accordance with any statutory or other procedure allowed by law for such substitution.

**6.4 Execution of Instruments by Beneficiary and Trustee.** Without notice to or affecting the liability of Grantor or any other Person for the payment or performance of the Obligations, without

affecting the lien or priority of this Deed of Trust or Beneficiary's rights and remedies under the Loan Documents, and without liability to Grantor or any other Person, Beneficiary and Trustee (if Trustee is so requested in writing by Beneficiary) shall have the right, at any time and from time to time, to do any one or more of the following: (a) reconvey any part of the Property; (b) consent in writing to the making of any map or plat relating to the Property; (c) join in or consent to the granting of any Easement affecting the Property; and (d) execute any extension agreement relating to any or all of the Obligations, any document subordinating the lien of this Deed of Trust to any other Lien or document, or any other document relating to the Property, Obligations, or Loan Documents.

**6.5 Trust Irrevocable; Acceptance by Trustee.** The trust created by this Deed of Trust is irrevocable by Grantor. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is recorded in the county in which the Property is located as provided by law. Trustee is not obligated to notify any party of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or the Trustee shall be a party unless brought by the Trustee.

**6.6 Late Charges.** If any installment payment under the Note or any note evidencing a Future Advance is not paid when due, Grantor shall pay any late charge provided for in the Loan Documents.

**6.7 Requests by Grantor for Approvals by Beneficiary.** All requests by Grantor for Beneficiary's consent to or approval of any transaction or matter requiring Beneficiary's consent or approval under the Loan Documents (a) shall be made by Grantor in writing; (b) shall specifically describe the transaction or matter with respect to which Beneficiary's consent or approval is requested; (c) shall be accompanied by such information and documentation as Beneficiary may require in connection with such request; and (d) shall be delivered to Beneficiary not less than fifteen (15) days before Grantor proposes to take the action or effect the transaction with respect to which Beneficiary's consent or approval is requested, unless a different period of time is expressly provided for in the Loan Documents.

**6.8 Approvals by Beneficiary.** Whenever (a) the terms of the Loan Documents grant Beneficiary the right to consent to or approve any transaction or matter; (b) Beneficiary is authorized or empowered under the Loan Documents to make a determination with respect to any transaction or matter; or (c) the Loan Documents provide that any document or other item must be approved by or acceptable to Beneficiary, then except as otherwise expressly provided in the Loan Documents, (i) Beneficiary shall have the right to grant or withhold such approval or consent and make such determination in its sole and absolute discretion; and (ii) the form and substance of such document or other item must be satisfactory to Beneficiary in its sole and absolute discretion. Whenever the terms of the Loan Documents require Beneficiary's consent to or approval of any transaction, matter, or document, such consent or approval shall not be deemed to be effective unless it is set forth in a written instrument executed by Beneficiary.

**6.9 Transfers by Grantor Without Beneficiary's Consent; No Release of Grantor.** The following provisions shall apply if Grantor sells the Property to a third Person either (i) without Beneficiary's consent; or (ii) with Beneficiary's consent in a transaction in which Grantor is not released from liability under the Loan Documents:

(a) **No Release of Grantor.** No such action by Grantor nor any assumption of any or all of the Obligations by any transferee of the Property ("Transferee") shall be deemed to release Grantor or any other Person, including any Guarantor, from any liability under the terms of the Loan Documents, and Grantor and such Persons shall remain liable to Beneficiary for the payment and performance of all of their respective obligations under the Loan Documents.

(b) **Actions Without Grantor's Consent.** Grantor agrees that Beneficiary may do any one or all of the following without notice to or the consent of Grantor and without affecting Beneficiary's rights or remedies against Grantor: (i) accelerate, accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Grantor's Obligations to Beneficiary under or in connection with this Deed of Trust or any of the other Loan

Documents; (ii) grant any indulgence or forbearance to the Transferee or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute or add any or all collateral securing payment of any or all of the Obligations; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Obligations; (v) amend, supplement, alter or change in any respect whatsoever any term or provision of the Loan Documents or any other agreement relating to the Obligations; and (vi) exercise any right or remedy with respect to the Obligations or any collateral securing the Obligations, notwithstanding any effect on or impairment of Grantor's subrogation, reimbursement or other rights against the Transferee.

(c) **Waivers.** Grantor waives all rights which it may have (i) to require Beneficiary to exhaust its rights and remedies against the Transferee, any other Person, or any collateral securing any or all of the Obligations before pursuing its rights and remedies against Grantor; (ii) to require Beneficiary to exercise any right or power or to pursue any remedy which Beneficiary may have under the Loan Documents or applicable law before pursuing its rights and remedies against Grantor; and (iii) to assert any defense to Beneficiary's enforcement of its rights and remedies against Grantor based on an election of remedies by Beneficiary or the manner in which Beneficiary exercises any remedy which destroys, diminishes or interferes with any or all of Grantor's subrogation, reimbursement or other rights against the Transferee.

**6.10 Taxes Imposed on Beneficiary.** If, after the date of this Deed of Trust, any Governmental Requirements are enacted for the purpose of taxing any lien on the Property or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust, so as to impose on Beneficiary payment of all or part of any Taxes assessed against the Property, then prior to the due date of such Taxes, Grantor shall pay all such Taxes and agree to pay such Taxes when levied or assessed against the Property or Beneficiary; provided, however, that if such payment or agreement by Grantor shall not be permitted by law, Beneficiary, at its option, shall have the right to declare any or all of the Obligations to be immediately due and payable upon notice to Grantor. Nothing contained in this Section shall be deemed to require Grantor to pay any franchise, estate, inheritance, income or similar tax imposed on Beneficiary.

**6.11 Recourse Against Separate Property.** Each Grantor who is a married person agrees that Beneficiary shall have the right to recourse against his or her community property and separate property for any or all Obligations to the fullest extent permitted by law.

**6.12 Defense of Actions and Protection of Security by Beneficiary.** Whether or not an Event of Default has occurred, Beneficiary and Trustee shall each have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Grantor, any of the Guarantors, or any other Person, which affects or which Beneficiary or Trustee determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Beneficiary's, Trustee's, or Grantor's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Beneficiary by reason of its interest in the Property. Beneficiary and Trustee shall each have the right, but not the obligation, to commence and prosecute any action or proceeding which Beneficiary or Trustee determines to be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims, or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds pursuant to this Deed of Trust; (iii) preserve, protect, maintain, and defend the Property and Beneficiary's lien thereon; or (iv) enforce or exercise any right, remedy or power available to or conferred on Beneficiary or Trustee under the Loan Documents or applicable law. Beneficiary and Trustee shall each have the right to discontinue, suspend or dismiss any such action or proceeding which has been commenced by Beneficiary or Trustee at any time.

**6.13 Expenses.** Beneficiary and Trustee, and each of them, shall have the right to incur and pay all costs, fees, expenses, and liabilities that Beneficiary and Trustee, respectively, determine to be necessary or appropriate in connection with any or all of the following matters (all such costs, fees, expenses and liabilities, excluding ordinary overhead expenses of Beneficiary's and Trustee's respective

regular business premises and salary expenses for Beneficiary's and Trustee's respective clerical and supervisory personnel, are referred to collectively as the "Reimbursable Costs"): (a) costs and expenses incurred in the management, servicing, or administration of the Loan and any Future Advances which relate to Beneficiary's review of those documents, transactions or other matters requiring Beneficiary's approval under the terms of the Loan Documents; (b) the exercise of any or all of Beneficiary's and Trustee's respective rights and remedies under the Loan Documents, including (i) all premiums and other costs and expenses paid or incurred by Beneficiary in connection with Beneficiary's obtaining any Insurance Policies; and (ii) all costs and expenses, including attorneys' fees and costs, incurred in connection with Beneficiary's review, preparation, analysis, or negotiation, as applicable, of any of the further documents or other matters that are contemplated by the Loan Documents or that Beneficiary has the right to require, review or approve pursuant to the Loan Documents, including Leases, estoppel certificates from any Tenant under any Lease or from any other Person, and non-disturbance, subordination or attornment agreements by any Tenant under any Lease or by any other Person; (c) the enforcement of any or all of the Obligations or any other obligation of any Person liable to Beneficiary in connection with the Loan or any Future Advance, whether or not any legal action or proceeding is commenced by Beneficiary; (d) the preservation, protection, maintenance, or defense of the Property or Beneficiary's lien thereon; (e) the sale or disposition of the Property or any other collateral securing any or all of the Obligations; (f) the defense of any action or proceeding commenced by Grantor, any of the Guarantors, or any other Person under Section 6.12 above; or (g) the commencement and prosecution of any action or proceeding by Beneficiary or Trustee with respect to any or all of the matters described in this Section or in Section 6.12 above, including an action for relief from any stay, injunction, or similar order or enactment arising under any federal or state bankruptcy, insolvency or similar law. Without limiting the terms of this Section, Beneficiary shall have the right to do any or all of the following in connection with any of the matters described in this Section, and all costs, fees, expenses, and liabilities incurred or paid in connection therewith shall constitute Reimbursable Costs: (1) select, retain, and consult with attorneys, accountants, appraisers, contractors, brokers, architects, engineers and such other experts, consultants, advisors and third Persons as Beneficiary determines to be necessary or appropriate; (2) settle, purchase, compromise or pay any or all claims, demands, and Liens; and (3) obtain any trustee's sale guaranty or other title insurance coverage relating to the Property which Beneficiary determines to be necessary or appropriate. Wherever any of the terms of the Loan Documents, including this Deed of Trust, provide for the payment or recovery of costs, fees, or other expenses (including attorneys' fees and costs), such term shall be deemed to provide for the payment or recovery of reasonable costs, fees, expenses, and reasonable attorneys' fees and costs, whether or not litigation or foreclosure proceedings are commenced, and including those incurred at trial, on appeal and in any bankruptcy, foreclosure or arbitration proceeding.

**6.14 Payment of Advances by Grantor.** All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Beneficiary under any other provision of the Loan Documents or under applicable law in connection with the Obligations or the Property (a) shall be payable by Grantor to Beneficiary on Beneficiary's demand; (b) shall constitute additional indebtedness of Grantor to Beneficiary; (c) shall be secured by this Deed of Trust; and (d) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Trustee under this Deed of Trust or under applicable law in connection with this Deed of Trust shall be payable by Grantor to Trustee on Trustee's demand and shall bear interest at the maximum rate permitted to be charged by Trustee under applicable law. Nothing contained in this Deed of Trust shall be deemed to obligate Beneficiary or Trustee (i) to incur any costs, fees, expenses, or liabilities; (ii) to make any appearances in or defend any action or proceeding; or (iii) to commence or prosecute any action or proceeding relating to any matter.

**6.15 No Third Party Beneficiaries.** The Loan Documents are entered into for the sole protection and benefit of Beneficiary, Grantor and Trustee and their respective permitted successors and assigns. No other Person shall have any rights or causes of action under the Loan Documents.

**6.16 Notices.** All notices and demands by Beneficiary to Grantor under this Deed of Trust and the other Loan Documents shall be in writing and shall be effective on the earliest of (a) personal delivery to Grantor; (b) two (2) days after deposit in first-class or certified United States mail, postage

prepaid, addressed to Grantor at the address set forth in this Deed of Trust; and (c) one (1) business day after deposit with a reputable nationally recognized overnight delivery service, delivery charges prepaid, addressed to Grantor at the address set forth in this Deed of Trust; provided, however, that notwithstanding anything to the contrary contained in this Section, service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing. All notices and demands by Grantor to Beneficiary under this Deed of Trust shall be in writing and shall be effective on actual receipt by Beneficiary at Beneficiary's address set forth in this Deed of Trust; provided, however, that nonreceipt of any such notice or demand by Beneficiary as a result of Beneficiary's refusal to accept delivery or Beneficiary's failure to notify Grantor of Beneficiary's change of address shall be deemed receipt by Beneficiary. Grantor's and Beneficiary's respective addresses set forth in this Deed of Trust may be changed by written notice given to the other party in accordance with this Section. If Grantor consists of more than one Person, service of any notice or demand on any one of such Persons by Beneficiary shall be effective service on Grantor for all purposes.

**6.17 Performance of Covenants.** Grantor shall perform and comply with all of its obligations under this Deed of Trust at Grantor's sole cost and expense.

**6.18 Severability; Savings Clause.** If any provision of the Loan Documents shall be held by any court of competent jurisdiction to be unlawful, voidable, void, or unenforceable for any reason, such provision shall be deemed to be severable from and shall in no way affect the validity or enforceability of the remaining provisions of the Loan Documents. Notwithstanding anything to the contrary contained in the Note or any of the other Loan Documents, the interest and other amounts paid or agreed to be paid to the Beneficiary in consideration of the Loan evidenced by the Note (such interest and other amounts are referred to collectively as "Interest") shall not exceed the maximum rate permitted under applicable usury laws. If, for any reason, the Interest exceeds the maximum rate permitted under applicable usury laws, then (a) all excess Interest amounts previously collected by the Beneficiary shall be credited against the principal balance of the Note or, at the Beneficiary's option, to any other principal indebtedness of Grantor to Beneficiary arising out of the Loan evidenced by the Note; (b) if the Note and all such other indebtedness have been paid in full, such excess amounts shall be refunded by the Beneficiary to Grantor; and (c) the provisions of the Note shall automatically be deemed to be reformed and the amount of Interest payable hereunder shall automatically be deemed to be reduced, without the execution of any further documents by Grantor or Beneficiary, so as to provide for the payment of Interest in an amount equal to, but not exceeding, the maximum rate permitted under applicable usury laws. All consideration paid to the Beneficiary which constitutes Interest under applicable usury laws shall be amortized, prorated, allocated, or otherwise apportioned throughout the term of the Note so that, to the extent possible, the rate of interest on the principal amount of the Note does not exceed the maximum rate permitted under applicable usury laws.

**6.19 Interpretation.** Whenever the context of the Loan Documents reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. For purposes of this Deed of Trust, all references to the Property or Improvements shall be deemed to refer to all or any part of the Property or Improvements, respectively. The headings to sections of this Deed of Trust are for convenient reference only, and they do not in any way define or limit any of the terms of this Deed of Trust and shall not be used in interpreting this Deed of Trust. For purposes of this Deed of Trust, the term "including" shall be deemed to mean "including without limitation," and the term "document" shall include all written contracts, commitments, restrictions, agreements (including loan agreements), deeds of trust, mortgages, notes, and instruments.

**6.20 Time of the Essence.** Time is of the essence in the performance of each provision of the Loan Documents by Grantor.

**6.21 Amendments.** The Loan Documents (excluding the Guaranties) may be modified only by written agreement signed by Beneficiary and Grantor.



**6.22 Entire Agreement.** The Loan Documents contain the entire agreement concerning the subject matter of the Loan Documents and supersede all prior and contemporaneous negotiations, agreements, statements, understandings, terms, conditions, representations and warranties, whether oral or written, between Beneficiary and Grantor concerning the Loan and any Future Advances which are the subject matter of the Loan Documents.

**6.23 No Waiver by Beneficiary.** No waiver by Beneficiary of any of its rights or remedies in connection with the Obligations or of any of the terms or conditions of the Loan Documents shall be effective unless such waiver is in writing and signed by Beneficiary. Without limiting the generality of this Section, (a) no delay or omission by Beneficiary in exercising any of its rights or remedies in connection with the Obligations shall constitute or be construed as a waiver of such rights or remedies; (b) no waiver by Beneficiary of any default by Grantor under the Loan Documents or consent by Beneficiary to any act or omission by Grantor shall constitute or be construed as a waiver of or consent to any other or subsequent default, act or omission by Grantor; (c) no disbursement of the proceeds of the Loan or any Future Advance by Beneficiary following any Event of Default shall constitute or be construed as a waiver of such Event of Default or obligate Beneficiary to make any other disbursement under the Loan Documents; (d) no acceptance by Beneficiary of any late payment or late or defective performance of any of the Obligations by Grantor shall constitute a waiver by Beneficiary of the right to require prompt payment and performance strictly in accordance with the Loan Documents with respect to any other payment or performance of any of the Obligations; (e) no acceptance by Beneficiary of any payment or performance following any notice of default which has been given or recorded by Beneficiary shall constitute a waiver of Beneficiary's right to proceed with the exercise of its remedies with respect to any Obligations which have not been paid or performed in full; (f) no acceptance by Beneficiary of any partial payment or performance shall constitute a waiver by Beneficiary of any of its rights or remedies relating to any Obligations which have not been paid or performed in full; and (g) no application of Rents and Profits, Insurance Proceeds, Condemnation Proceeds or Property Proceeds to any of the Obligations shall constitute or be construed as a waiver by Beneficiary or cure of any Event of Default or impair, prejudice, invalidate or otherwise affect any action by Beneficiary or Trustee in response to such default.

**6.24 Waivers by Grantor.** Grantor waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents. Grantor waives the right to assert any statute of limitations as a defense to the enforcement of any or all of the Loan Documents to the fullest extent permitted by law. Without limiting the generality of the immediately preceding sentence, in the event of Grantor's payment in partial satisfaction of any or all of the Obligations, Beneficiary shall have the sole and exclusive right and authority to designate the portion of the Obligations that is to be satisfied.

**6.25 Waiver of Marshalling.** Grantor and all Persons holding a Lien affecting the Property who have actual or constructive notice of this Deed of Trust waive (a) all rights to require marshalling of assets or liens in the event of Beneficiary's exercise of any of its rights and remedies under this Deed of Trust, including any judicial or nonjudicial foreclosure sale of the Property; (b) all rights to require Beneficiary to exhaust its rights and remedies against any other collateral securing any or all of the Obligations before pursuing its rights and remedies under this Deed of Trust; and (c) all rights to require Beneficiary to exercise any other right or power or to pursue any other remedy which Beneficiary may have under any document or applicable law before pursuing its rights and remedies under this Deed of Trust.

**6.26 Waiver of Subrogation.** Grantor waives all rights to recover against Beneficiary for any loss or damage incurred by Grantor from any cause which is insured under any of the Insurance Policies, except that the foregoing waiver of subrogation shall not be effective with respect to any Insurance Policy if the coverage under such policy would be materially reduced or impaired as a result of such waiver. Grantor shall use its best efforts to obtain Insurance Policies which permit the waiver of subrogation contained in this Section.

**6.27 Cumulative Remedies.** No right or remedy of Beneficiary or Trustee under this Deed of Trust or the other Loan Documents shall be exclusive of any other right or remedy under the Loan Documents or to which Beneficiary or Trustee may be entitled. Beneficiary's rights and remedies under the Loan Documents are cumulative and in addition to all other rights and remedies which Beneficiary may have under any other document with Grantor and under applicable law. Beneficiary shall have the right to exercise any one or more of its rights and remedies in connection with the Obligations at Beneficiary's option and in its sole and absolute discretion, without notice to Grantor or any other Person (except as otherwise expressly required by law or under the Loan Documents), and in such order as Beneficiary may determine in its sole and absolute discretion. If Beneficiary holds any collateral in addition to the Property for any of the Obligations, Beneficiary, at its option, shall have the right to pursue its rights or remedies with respect to such other collateral either before, contemporaneously with, or after Beneficiary's exercise of its rights or remedies with respect to the Property. Upon the occurrence of an Event of Default, Beneficiary, at its option, shall have the right to offset against any debt or monies due from Beneficiary to Grantor against all or part of the Obligations.

**6.28 Subrogation to Lien Rights.** If any or all of the proceeds of the Note or any Future Advance are directly or indirectly used to pay any outstanding Lien against the Property, or if Beneficiary pays or discharges any Lien pursuant to any of the terms of the Loan Documents or under applicable law, Beneficiary shall be subrogated to all rights and liens held by the holder of such Lien, regardless of whether such Lien is reconveyed.

**6.29 Joint and Several Liability.** Each Person signing this Deed of Trust as Grantor shall be jointly and severally liable to Beneficiary for the performance of Grantor's obligations under the Loan Documents. If Grantor consists of more than one Person, the occurrence of any Event of Default with respect to any one or more of such Persons shall constitute an Event of Default and entitle Beneficiary to exercise its rights and remedies under Article 4 of this Deed of Trust.

**6.30 Sale of Loan Documents and Participations.** Beneficiary shall have the right to do any or all of the following at any time without prior notice to or the consent of Grantor or any other Person: (a) to sell, transfer, pledge or assign any or all of Loan Documents, or any or all servicing rights with respect thereto; (b) to sell, transfer, pledge or assign participations in the Loan Documents ("Participations"); and (c) to issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Beneficiary is authorized to forward or disclose to each purchaser, transferee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "Investor") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Beneficiary now has or may hereafter acquire relating to the Loan and to Grantor or any Guarantor as Beneficiary determines to be necessary or desirable. Upon Beneficiary's request, Grantor shall reasonably cooperate with Beneficiary in connection with any of the transactions contemplated by this Section. Notwithstanding anything to the contrary contained in this Deed of Trust or any of the other Loan Documents, from and after the date of any sale, transfer or assignment of the Note and other Loan Documents by Beneficiary, the cross-default provision contained in Section 3.3 of this Deed of Trust shall terminate and shall be of no further force or effect.

**6.31 Applicable Law; Jurisdiction.** The Loan Documents shall be governed by and construed in accordance with the laws of the State of Oregon. Grantor consents to personal jurisdiction over Grantor by the courts of the State of Oregon and agrees that service of process on Grantor may be effected by certified or registered mail, return receipt requested, directed to Grantor at its address shown in this Deed of Trust.

**6.32 Successors.** Subject to the restrictions contained in the Loan Documents, the Loan Documents shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective permitted successors and assigns.

**6.33 Power of Attorney.** Grantor irrevocably appoints Beneficiary, with full power of substitution, as Grantor's attorney-in-fact, coupled with an interest, with full power, in Beneficiary's own name or in the name of Grantor (a) to take any or all of the actions specified in Article 4 above with respect to the Property; and (b) to sign and record notices of completion, notices of cessation of labor, and any other similar notice or document which Beneficiary determines to be necessary or appropriate to protect its interests in connection with the Obligations. Beneficiary shall have the right to exercise the power of attorney granted in this Section directly or to delegate all or part of such power to one or more agents of Beneficiary. Nothing contained in this Deed of Trust shall be construed to obligate Beneficiary to act on behalf of Grantor as attorney-in-fact.

**6.34 No Merger.** There shall be no merger of any estate in the Property which Grantor acquires after the date of this Deed of Trust with all or any portion of the estate in the Property which Grantor holds as of the date of this Deed of Trust, unless Beneficiary shall expressly agree otherwise in writing.

**6.35 Request for Notices.** Grantor hereby requests that a copy of any notice of default and notice of sale as may be required by law be mailed to Grantor at its address stated above.

**6.36 Attorneys' Fees.** Notwithstanding anything herein to the contrary, in the event a suit or action is instituted to enforce any of the terms of this Deed of Trust, the prevailing party shall be entitled to recover its reasonable attorneys' fees at trial, on any appeal, on any petition for review, in an arbitration proceeding, and in any bankruptcy proceeding in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights shall become a part of the Obligations, shall be payable on demand and shall bear interest from the date of expenditure until the same is repaid at the applicable rate of interest provided in the Note. Expenses covered by this Section include (without limitation) the cost of searching records, obtaining title reports, surveyor's reports, environmental inspections, attorneys' opinions, title insurance and fees for the Trustee.

## **ARTICLE 7**

### **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT**

**7.1 Uniform Commercial Code Security Agreement.** Article 7 of this Deed of Trust constitutes a security agreement pursuant to the Oregon Uniform Commercial Code (the "Code"). To secure payment and performance of the Obligations, Grantor grants Beneficiary a security interest in all now owned and hereafter acquired personal property of Grantor obtained for or used in connection with the design, planning, construction, development, use, operation, maintenance, or marketing of the Property (collectively, the "Collateral"), including the following: (a) all fixtures, machinery, machines, motor vehicles, tools, parts, equipment, pumps, engines, motors, boilers, incinerators, building materials, inventory, supplies, goods, systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light, elevators and related machinery and equipment, fire prevention and extinguishing equipment, security and access control equipment, plumbing, showers, bath tubs, water heaters, toilets, sinks, stoves, ranges, refrigerators, dishwashers, disposals, laundry equipment, wall, window and floor coverings, partitions, doors, windows, hardware, waste and rubbish removal equipment, recreational equipment, signs, furniture, furnishings, appliances, telephone equipment, computer systems, office equipment and supplies, plants, carpets, rugs, sculptures, art work, mirrors, tables, lamps, beds, television sets, light fixtures, chandeliers, desks, cabinets, bookcases, chairs, sofas, benches, and janitorial and maintenance equipment and supplies, and all substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing; provided however, should the Land now or hereafter be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Beneficiary shall retain its security interest in intangible personal property collateral and the tangible personal property collateral shall be limited to the items of tangible personal property which (i) constitute Goods or Equipment under Article 9 of the Code, and (ii) are specifically covered (currently or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with the National Flood Insurance Program or under equivalent coverage

similarly issued by a private issuer to satisfy the National Flood Insurance Act (as amended); (b) all deposits, advance payments, security deposits, and rental payments made by or on behalf of Grantor to others in connection with the Property and relating to any or all of the following: (i) management or operational services; (ii) marketing services; (iii) architectural, engineering, or design services; (iv) utility services; (v) cleaning, maintenance, security, or repair services; (vi) rubbish or refuse removal services; (vii) sewer services; (viii) rental of furnishings, fixtures or equipment; (ix) parking; or (x) any service similar to any or all of the foregoing; (c) all reports, appraisals, drawings, plans, blueprints, studies, specifications, certificates of occupancy, building permits, grading permits, and surveys relating to all or part of the Property, and all amendments, modifications, supplements, general conditions and addenda thereto; (d) all trade names, trademarks, trade styles, service marks, logos, letterheads, advertising symbols, goodwill, telephone numbers, advertising rights, negatives, prints, brochures, flyers, pamphlets and other media items used or intended to be used in connection with the Property; (e) all warranties and guaranties, whether written or oral, from any third Person which directly or indirectly relate to all or part of the Property or personal property described in parts (a) through (d) of this Section 7.1; (f) all legal and equitable claims, causes of action, and rights against architects, engineers, designers, contractors, subcontractors, suppliers, materialmen and any other Persons supplying labor, services, materials or equipment, directly or indirectly, in connection with the design, planning, construction, development, use, operation, maintenance, or marketing of all or part of the Property; (g) all Condemnation Claims, Condemnation Proceeds, Property Claims, Property Proceeds, Insurance Claims, and Insurance Proceeds (regardless of whether or not Beneficiary required Grantor to obtain or maintain in effect the Insurance Policy or Insurance Policies under which the Insurance Claims arise or the Insurance Proceeds are payable); (h) all real property tax refund claims, general intangibles, accounts, deposit accounts, documents, instruments, chattel paper, and accounts receivable relating to the design, planning, construction, development, use, operation, maintenance or marketing of all or part of the Property, including any right to payment for goods sold or leased or to be sold or leased or for services rendered or to be rendered, however evidenced, including purchase orders, negotiable documents, notes, drafts, acceptances, claims, instruments, insurance policies, and all other forms of obligations and receivables; and (i) all products and proceeds of any or all of the foregoing personal property, including all money, deposit accounts, accounts, chattel paper, documents, notes, drafts, instruments, insurance proceeds, and all other tangible and intangible property resulting from the sale, lease, or other disposition of any or all of the foregoing personal property.

**7.2 Filing.** Grantor agrees that Beneficiary may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items of Collateral specified in Section 7.1 above which is or may be part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. Grantor agrees to execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions to this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to all or part of the Collateral. Grantor authorizes Beneficiary to file financing statements and to take such other actions as Beneficiary deems necessary or advisable to evidence, perfect, continue, protect or enforce Beneficiary's security interests in the Collateral. Grantor shall pay all costs of filing of such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Beneficiary may reasonably require.

**7.3 Additional Covenants of Grantor.** Grantor, at its sole cost and expense, (a) shall give Beneficiary at least thirty (30) days prior written notice of any change in Grantor's principal place of business and the acquisition or use of a trade name or style by Grantor; (b) shall promptly notify Beneficiary in writing of any claim, lien, security interest, right, encumbrance or any other occurrence which may be adverse to Beneficiary's security interest in the Collateral; (c) shall defend the Collateral from all claims, liens, security interests, rights, encumbrances and other matters which are adverse to Beneficiary's security interest in the Collateral; (d) shall promptly pay all costs and expenses relating to the purchase, ownership, or use of the Collateral, including all liens, taxes, assessments and charges of Governmental Authorities levied, assessed or imposed on all or part of the Collateral; (e) shall not sell, transfer, pledge, hypothecate, lease or otherwise dispose of or abandon all or part of the Collateral without Beneficiary's prior written consent, except for the sale of inventory in the ordinary course of

Grantor's business or the disposition of any Collateral which is replaced with new Collateral of substantially comparable value and utility; (f) shall not remove any material part of the Collateral which consists of tangible personal property from its location on the Property without Beneficiary's prior written consent; (g) shall, upon Beneficiary's request, give notice, in form and substance acceptable to Beneficiary, to any or all account debtors designated by Beneficiary of Grantor's grant of a security interest in any Collateral which consists of accounts, contract rights, instruments, documents, or general intangibles (referred to collectively as the "Accounts" and individually as an "Account"); (h) following the occurrence of any Event of Default, shall not compromise, settle, adjust, or grant any discount, credit, or allowance to any Account debtor without Beneficiary's prior written consent; (i) shall undertake any and all other acts necessary or appropriate to maintain, preserve and protect the Collateral and Beneficiary's security interest therein, including any actions requested by Beneficiary; and (j) shall execute and deliver to Beneficiary such other documents as Beneficiary may request in order to evidence, effectuate, perfect, maintain, preserve or protect Beneficiary's security interest in the Collateral, including financing statements, continuation financing statements, financing statement amendments, security agreements, and assignments. If Grantor fails to execute and deliver to Beneficiary any document requested by Beneficiary pursuant Section 7.3(j) within ten (10) days after such request, then Grantor irrevocably appoints Beneficiary, with full power of substitution, as Grantor's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Grantor, to execute such document on behalf of Grantor. Grantor has set forth above its full and correct name, and Grantor does not presently use any other names or tradenames, except for those tradenames specifically disclosed in writing by Grantor to Beneficiary prior to the recordation of this Deed of Trust. Nothing contained in this Article 7 shall be construed to obligate Beneficiary to act on behalf of Grantor as attorney-in-fact.

#### **7.4 Rights and Additional Remedies of Beneficiary under Uniform Commercial Code.**

Without limiting Article 4 above, upon the occurrence of an Event of Default, Beneficiary shall have the following additional rights and remedies with respect to the Collateral: (a) Beneficiary shall have all the rights and remedies of a secured party under the Code and under any other applicable law, and, at Beneficiary's option, shall also have the right to invoke any or all of the remedies provided in Article 4 of this Deed of Trust with respect to the Collateral, and in exercising any of such remedies, Beneficiary may proceed against the items of real property and any items of Collateral separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the Code or of the remedies provided in Article 4 of this Deed of Trust; (b) Beneficiary, at its option, shall have the right (i) to direct any or all Account debtors to make payment directly to Beneficiary; (ii) to demand, collect, receive and give receipts for any and all money and other property due or to become due in connection with all or part of the Collateral, including any of the Accounts; (iii) to take possession of and endorse and collect any or all notes, checks, drafts, money orders, or other instruments of payment relating to all or part of the Collateral or proceeds of the Collateral, including any of the Accounts; and (iv) to file any claim and take any other action which Beneficiary determines to be appropriate for the purpose of collecting any or all of the Accounts and to compromise, adjust or settle Accounts for less than face value thereof, and to execute all releases and other documents in connection therewith; provided, however, that Beneficiary shall not be obligated in any manner to make any demand for or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any action to collect or enforce the payment of any or all of the Accounts; (c) should Beneficiary seek to take possession of any or all of the Collateral by court process, Grantor irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose without regard to the adequacy of the security for the Obligations; and (d) Grantor irrevocably appoints Beneficiary, with full power of substitution, as Grantor's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Grantor to take any or all of the actions described Section 7.4(b) after the occurrence of an Event of Default. Beneficiary, at its option, and whether or not an Event of Default exists, shall at all times have the right [A] to take such actions as Beneficiary determines to be necessary or appropriate to maintain, preserve and protect the Collateral and Beneficiary's security interest therein; and [B] to give notice to any Account debtor containing such information and instructions concerning the existence of Beneficiary's security interest and rights in the Collateral under this Deed of Trust as Beneficiary determines to be necessary or appropriate to protect its interest.

7.5 **Fixtures.** The Collateral in which Beneficiary has a security interest under this Article 7 includes goods which are or may become Fixtures on the Property. This Deed of Trust constitutes a fixture filing pursuant to the terms of ORS 79.0502, which shall be recorded in the real estate records of the county in which the Property is located.

## **ARTICLE 8**

### **HAZARDOUS SUBSTANCES**

8.1 **Representations and Warranties.** Grantor continuously represents and warrants to Beneficiary as follows, and each of the following representations is qualified to the extent that it is accurate except for Permitted Substances, as disclosed by an Environmental Report that has been provided to Beneficiary, or as disclosed by a Disclosure Statement that has been provided to Beneficiary: (a) (i) the Property does not contain any Hazardous Substances, and no underground storage tanks or underground deposits of Hazardous Substances are or previously have been located on the Property; and (ii) Grantor is in compliance with all Hazardous Substance Laws relating to the Property and the use of the Property, including those relating to disclosure to tenants of the Property; (b) all information provided by Grantor to the Beneficiary in any Disclosure Statement relating to Hazardous Substances is accurate and complete in all respects; (c) no mold is present in the indoor air of the Property at concentrations exceeding ambient air levels and no visible mold is present on any building materials or surfaces at the Property for which any Governmental Authority recommends or requires removal thereof by remediation professionals, and Grantor is not aware of any conditions at the Property that are likely to result in the presence of mold in the indoor air at concentrations that exceed ambient air levels or on building materials or surfaces that would require such removal; (d) there is no pending or, to the best of Grantor's knowledge, threatened action by or proceedings before any Governmental Authority in which any person alleges the existence, presence, release, threat of release, placement in, on, above, under or about the Property, or the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, above, under or about the Property, or the transportation to or from the Property of any Hazardous Substance; (e) Grantor has not received any notice or has knowledge or reason to believe that any Governmental Authority has determined or threatens to determine that (i) any Hazardous Substance exists or is present in, on, above, under or about the Property; (ii) any Hazardous Substance is being stored, generated, produced, treated, disposed of, or handled in, on, above, under or about the Property; or (iii) any Hazardous Substance has been or is being Released or transported onto or from the Property; (f) there have been no communications or agreements by Grantor with any Governmental Authority or any other person, including, to Grantor's knowledge, any prior owners of the Property, relating in any way to (i) the presence, release, threat of release, placement in, on, above, under or about the Property of Hazardous Substances, (ii) the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, above, under or about the Property of Hazardous Substances, (iii) the transportation to or from the Property of Hazardous Substances, or (iv) the past or current remediation of any Hazardous Substance.

8.2 **Activities.** Grantor shall comply and cause the Property to comply with all Hazardous Substance Laws. Without limiting the generality of the preceding sentence and except for Permitted Substances, Grantor shall not cause nor permit: (a) the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, above, under or about the Property, whether such activities are conducted by Grantor or any other party, including any Tenant, including the installation of any underground storage tanks or facilities for the deposit or storage of any Hazardous Substances; or (b) the release or transport of any Hazardous Substance onto or from the Property, including the contamination of any surrounding property or any natural resources, including air, soil, and groundwater. In addition to the foregoing, Grantor covenants and agrees that: (a) there shall be no releases of Hazardous Substances in, on, above, under, about or from the Property in violation of applicable Hazardous Substance Laws; (b) there shall be no Hazardous Substances in, on, above, under or about the Property, except for Permitted Substances; (c) Grantor shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Hazardous Substance Laws, whether due to any act or omission of Grantor or any other entity or Person; (d) Grantor shall, at its sole cost and expense, comply with all reasonable written requests of Beneficiary to (i) effectuate remediation of any

condition (including but not limited to a release of a Hazardous Substance) in, on, above, under, about or from the Property in violation of Hazardous Substance Laws; (ii) comply with any applicable Hazardous Substance Laws; (iii) comply with any directive from any Governmental Authority in connection with matters relating to Hazardous Substances or Hazardous Substance Laws; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment in accordance with applicable Hazardous Substance Laws; and (e) Grantor shall not do or allow any Tenant to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property. Notwithstanding anything to the contrary contained in this Article 8, nothing contained in this Article 8 shall be deemed to prohibit the use or existence on the Property of any Permitted Substances.

**8.3 Inspections.** Grantor authorizes Beneficiary, acting directly through its authorized agents or through a court-appointed receiver, to enter upon and inspect the Property for the purpose of determining the existence, character, and magnitude of any Hazardous Substances in, on, above, under or about the Property. Such entry by the Beneficiary shall be made during normal business hours and upon not less than two (2) business days prior notice by the Beneficiary to Grantor, except when the Beneficiary in good faith determines that an emergency exists, in which case the Beneficiary shall have the right to enter upon the Property without notice and at such different times as the Beneficiary in good faith determines may be necessary or appropriate for the protection of the Beneficiary's interests. Without limiting the terms of any of the Loan Documents, Beneficiary shall have the absolute and unconditional right to apply to any court of competent jurisdiction and obtain the appointment of a receiver or receivers to enforce Beneficiary's inspection rights relating to Hazardous Substances as authorized by applicable law. Beneficiary shall have no obligation or duty of any kind to enter on or inspect the Property or to examine or review Grantor's books and records relating to any Hazardous Substances. All such inspections and reviews by Beneficiary, including the Beneficiary's review of any assessment report or proposed plan of testing, monitoring, cleanup or remediation, shall be for Beneficiary's sole benefit and not for the benefit of Grantor nor any other party. No inspection of the Property by Beneficiary shall constitute or be construed as a representation or determination by Beneficiary that the Property complies with any Hazardous Substance Laws or that Hazardous Substances are or are not present in, on, above, under or about the Property or any other property. All information prepared by or for Beneficiary in connection with the exercise of its rights under this Deed of Trust shall at all times be and remain the Beneficiary's property, and the Beneficiary shall have no obligation to disclose or otherwise make such information available to Grantor or any other party, except as otherwise required by applicable law.

**8.4 Notice.** Promptly upon receipt by the Grantor, or as applicable, promptly following the Grantor's delivery to a Governmental Authority, Grantor shall deliver to the Beneficiary complete and accurate copies of all notices, correspondence, and information which Grantor receives from or, at the request of a Governmental Authority, forwards to any Governmental Authority regarding (i) any Hazardous Substance in, on, above, under or about the Property or the surrounding property; or (ii) any actions instituted, contemplated, or threatened by any such Governmental Authority concerning any Hazardous Substance which affects or may affect the Property or any surrounding property. Grantor shall promptly notify the Beneficiary in writing of (a) any information that Grantor obtains regarding any Hazardous Substance, other than a Permitted Substance, in, on, above, under or about the Property or any surrounding property; (b) any information that Grantor obtains regarding the release or transport of any Hazardous Substance, other than a Permitted Substance, onto or from the Property or any surrounding property; (c) any Hazardous Substance Claims and Losses of which Grantor is aware; and (d) the imposition or proposed imposition of any restriction on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Law. Without limiting the provisions of any Loan Document, within ten (10) business days after Beneficiary's request to Grantor, Grantor, at its expense, shall provide Beneficiary with complete and accurate copies of all books and records and reports relating to Hazardous Substances in, on, above, under or about the Property or any surrounding property which may be requested by the Beneficiary.

**8.5 Release and Indemnity.** Grantor hereby (a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event it becomes liable for cleanup or other costs under any Environmental Laws, and (b) covenants and agrees to indemnify, protect, and hold Beneficiary harmless from and against any and all Hazardous Substance Claims and Losses. Beneficiary's right to indemnification under this section shall not directly or indirectly be limited, prejudiced, impaired or eliminated in any way by any finding or allegation that its conduct in connection with the Hazardous Substance Claims and Losses is active, passive or subject to any other classification or that Beneficiary is directly or indirectly responsible under any theory of any kind, character or nature for any act or omission by Grantor or any other party.

**8.6 Survival.** Notwithstanding anything to the contrary set forth herein or in any other Loan Document, this Deed of Trust shall not secure the obligations of Grantor or any other party thereto under the Environmental Indemnity Agreement of even date herewith executed by Grantor and certain other Persons in favor of Beneficiary (together with any amendments, supplements or replacements and any similar agreements, the "Indemnity Agreement"). All of such obligations shall constitute the separate, unsecured full recourse obligations of Grantor and any other parties and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust.

NOTICE TO GRANTOR: THIS DOCUMENT OR THE NOTE SECURED BY THIS DOCUMENT MAY CONTAIN PROVISIONS FOR A VARIABLE INTEREST RATE AND FOR VARIABLE PAYMENT AMOUNTS.

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

[Signatures on the following page]



In Witness Whereof, the Grantor has executed and delivered this instrument as of the day and year above written.

**GRANTOR:**

**FERRIS KLAMATH FALLS INVESTMENT PROPERTY, LLC, an Oregon limited liability company**

**By: The Neal A. Ferris and Sarah E. Ferris 1998 Trust, Managing Member**

By: Sarah E. Ferris  
Sarah E. Ferris, Trustee

**ACKNOWLEDGMENT**

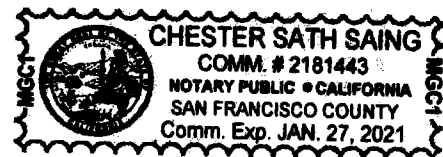
[INDIVIDUAL ACKNOWLEDGMENT]

[STATE OF OREGON )  
ss. California )

COUNTY OF San Francisco

This record was acknowledged before me on June 24, 2019 by Sarah E. Ferris

[Signature]  
Signature of Notarial officer  
Stamp (if required):  
Title of Office: Notary Public  
My Commission Expires: Jan 27, 2021



STATE OF OREGON )  
ss. )  
COUNTY OF San Francisco

This record was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notarial officer  
Stamp (if required):  
Title of Office: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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

Subscribed and sworn to (or affirmed) before me on this 24  
day of June, 20 19 by \_\_\_\_\_  
Sarah E. Ferris

proved to me on the basis of satisfactory evidence to be the  
person ☒ who appeared before me.



(Seal)

Signature \_\_\_\_\_

A handwritten signature in black ink, appearing to be "CS Saing", written over a horizontal line.

## EXHIBIT "A"

**Order No.:** 472519002501

A parcel of land situated in the SE1/4 NE1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, being Lots 16 and 17 of Tract 1276, a resubdivision of a portion of Lot 3, Block 1 of Tract 1080- Washburn Park, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Westerly right of way of Washburn Way, said point being the Northeast corner of said Lot 16; thence South 00°02'00" East 202.00 feet; thence South 89°58'00" West 209.00 feet; thence North 00°02'00" West 202.00 feet; thence North 89°58'00" East 209.00 feet to the point of beginning.

TOGETHER WITH the easements restrictions and covenants contained in that certain declaration of cross easements and restrictive covenants recorded in Volume M97, page 7211, Microfilm Records of Klamath County, Oregon and that certain easements with covenants and restrictions affecting land recorded in Volume M91, page 12081, Microfilm Records as amended by that certain amendment no. 1 to easements with covenants and restrictions affecting land recorded in Volume M97, page 28746, Microfilm Records of Klamath County, Oregon.