

**2020-002315**

**Klamath County, Oregon**

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Fee: \$242.00

Record and Return to:

Cassin & Cassin LLP  
2900 Westchester Avenue, Suite 402  
Purchase, New York 10577  
Attn: Recording Department

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

**FROM**

**DKM2, LLC, L-39 LLC, KFALLS CENTER, LLC and RED KNIGHT, LLC (collectively,  
"Grantor")**

**TO**

**FIRST AMERICAN TITLE INSURANCE COMPANY  
("Trustee")**

**FOR THE BENEFIT OF**

**MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION  
a national banking association  
("Beneficiary")**

Dated: February 26, 2020

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**LOCATION OF PREMISES:**

Property Location:	2740 South 6 <sup>th</sup> Street
City of:	Klamath Falls
County of:	Klamath
State of:	Oregon
Tax Lot No.:	R-3909-003BC-00900-000

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NCS-992147-0R1

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "**Deed of Trust**") made as of February 26, 2020, by **DKM2, LLC**, an Oregon limited liability company, having an address at P.O. Box 1800, Corvallis, Oregon 97339 ("**DKM2 Borrower**"), **L-39, LLC**, an Oregon limited liability company, having an address at P.O. Box 1800, Corvallis, Oregon 97339 ("**L-39 Borrower**"), **KFALLS CENTER, LLC**, an Oregon limited liability company, having an address at 1100 East 8<sup>th</sup> Street, Austin, Texas 78702 ("**KFALLS Borrower**"), and **RED KNIGHT, LLC**, an Oregon limited liability company, having an address at 7250 NE Avalon Drive, Corvallis, Oregon 97330, ("**RED KNIGHT Borrower**") together with DKM2 Borrower, L-39 Borrower and KFALLS Borrower are as applicable, individually and collectively, the "**Grantor**", as tenants in common, to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, having its principal business office at 200 SW Market Street, Suite 250, Portland, Oregon 97201 ("**Trustee**") for the benefit of **MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at 2000 Westchester Avenue, Purchase, New York 10577 ("**Beneficiary**").

**WITNESSETH**

A. Pursuant to a certain Term Loan Agreement of even date herewith between Grantor and Beneficiary (as the same may be supplemented, restated, superseded, amended or replaced from time to time, the "**Loan Agreement**"), Grantor has executed and delivered to Beneficiary a certain Note bearing even date herewith in the principal amount of up to **FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00)** (as the same may be supplemented, restated, superseded, amended or replaced from time to time, the "**Note**").

B. Grantor is the record owner of (i) all of that certain real estate situated in the City of Klamath Falls, County of Klamath, State of Oregon, more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**"); and (ii) title to the Improvements (as hereinafter defined) located thereon.

C. Grantor desires to secure the payment and performance of the Obligations (as defined below), by among other things, entering into this Deed of Trust.

D. Capitalized terms used without further definition herein shall have the meaning set forth in the Loan Agreement.

NOW, THEREFORE, in consideration of the financing arrangements established under the Loan Agreement, and as security for:

(1) payment to Beneficiary of all Obligations;

(2) payment to Beneficiary of all future or additional advances which may be made by Beneficiary to or for the account of Grantor, together with interest on such advances (including, without limitation, all sums which Beneficiary may advance under this Deed of Trust or the other Loan Documents with respect to the Deed of Trust Property (as defined below) to pay for taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Deed of Trust

Property or the lien of this Deed of Trust, and expenses incurred by Beneficiary by reason of default by Grantor under this Deed of Trust or under any of the other Loan Documents); and

- (3) performance of the undertakings and covenants contained in the Loan Documents.

### GRANTING CLAUSES

Grantor, in consideration of the premises, the indebtedness evidenced by the Note, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged (a) has mortgaged, warranted, granted, bargained, sold, alienated, released, confirmed, conveyed, pledged and assigned, and (b) by these presents does hereby irrevocably grant and create a first priority lien on and security interest in, subject to those permitted encumbrances included in a Beneficiary's title policy approved by Beneficiary and the provisions hereof and of the other Loan Documents, and does hereby MORTGAGE, GRANT A SECURITY INTEREST IN AND PLEDGE to Beneficiary and its successors and assigns forever, all of Grantor's estate, right, title and interest now owned or hereafter acquired in, to and under any and all the property (collectively, the "Deed of Trust Property") described in the following Granting Clauses:

- (1) The Land;
- (2) All buildings and improvements now or hereafter located upon the Land (the "Improvements");
- (3) All present and future leases, subleases, subsubleases, licenses and other occupancy agreements (whether written or oral) covering all or any portion of the Land, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, licenses and other occupancy agreements (which, together with Grantor's interest as landlord thereunder, are herein collectively referred to herein as the "Leases");
- (4) All rents, issues and profits payable under the Leases and under any future renewals, extensions, amendments or modifications thereof (collectively, the "Rent");
- (5) All fixtures, appliances, machinery, equipment, furnishings and furniture of any nature whatsoever, and other articles of personal property now or hereafter owned by Grantor and (i) which now or at any time hereafter are installed in, attached to or located in or upon the Land; (ii) used or intended to be used in connection with the Land or the Improvements, or in the operation or maintenance of the Deed of Trust Property (including, without limitation, communications, computer and security systems and the software system therefor); or (iii) the plant or business located thereon, whether or not the personal property is or shall be affixed thereto, expressly including, but without limiting the generality of the foregoing, all articles of personal property listed on Exhibit B attached hereto and made part hereof;
- (6) All building materials, fixtures, building machinery and building equipment owned by Grantor and delivered on site to the Land or the Improvements during the course of, or in connection with, the construction of, or reconstruction of, or remodeling of any Improvements from time to time during the term hereof;
- (7) Any and all tenements, hereditaments and appurtenances belonging to the Land or any part thereof, or in any way appertaining thereto, and all streets, alleys, passages, ways, water courses, and all leasehold estates, easements and covenants now existing or hereafter created for the benefit of Grantor or any subsequent owner or tenant of the Land or the Improvements over ground adjoining the Land and all rights to enforce the maintenance thereof, and all other rights, liberties and privileges of whatsoever

kind or character, together with any after-acquired property interest in the Land which Grantor may at any time hereafter have or acquire, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Grantor in and to the Land or any part thereof;

(8) To the extent assignable, all management agreements, service contracts, license agreements, concession agreements, written or oral, relating to the use and occupancy of the Land now or hereafter existing and the reversions and remainders and Rent arising therefrom and all deposits (including, without limitation, tenant security deposits) thereunder, and all rights and benefits now or hereafter accruing to Grantor under any and all guarantees of the obligations of any tenant, licensee, concessionaire or other occupant thereunder, as any of the foregoing may be amended, extended, renewed or modified from time to time;

(9) All reciprocal easement agreements, operating agreements, and similar agreements however labeled or denominated affecting the Land;

(10) All other documentation belonging to or in Grantor's possession now or hereafter existing in connection with the use or operation of the Land including, without limitation, any plans and specifications pertaining to the Improvements, all appraisals, engineering, environmental, soils, marketing and other reports and studies relating to the Land or the Improvements, all permits, licenses, and contract rights, warranties, guarantees, tenant lists, correspondence with present or prospective tenants or suppliers, advertising materials, and telephone exchange numbers as identified in such advertising materials; and

(11) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards;

**PROVIDED, HOWEVER,** if during the term of the Term Loan, any portion of the Deed of Trust Property is situated in an area designated by the Administrator of the Federal Emergency Management Agency ("**FEMA**") as a "special flood hazards area" (whether designated as such on or after the date hereof) (such period shall be the "**Flood Zone Inclusion Period**"), the "Improvements" and the "personal property" which are mortgaged, given, granted, bargained, sold, alienated, conveyed, confirmed, pledged, assigned or hypothecated hereunder shall be limited to only those items specifically covered in "Coverage A" of the then current form of Standard Flood Insurance Policy ("**Flood Policy**") issued by FEMA in accordance with the National Flood Insurance Program existing during such Flood Zone Inclusion Period, or under equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended).

TO HAVE AND TO HOLD the Deed of Trust Property hereby conveyed or mentioned and intended so to be, unto Beneficiary, to its own use forever.

**PROVIDED ALWAYS,** this instrument is upon the express condition that, upon payment in full of all Obligations, then this Deed of Trust and the estate hereby granted shall, at the request and at the expense of Grantor, be terminated.

**GRANTOR REPRESENTS, COVENANTS AND WARRANTIES** to and with Trustee and Beneficiary that until the Obligations are indefeasibly paid in full:

1. **Payment and Performance.** Grantor shall pay to Beneficiary all of Grantor's obligations to repay the Term Loan to Beneficiary, together with all interest thereon, as well as all other sums, costs and expenses for which Grantor may be obligated to pay under the Note, the Loan Agreement and the other Loan Documents (collectively, the "**Obligations**"), in each case in accordance with the terms of the

Loan Documents. Grantor shall perform and comply with all of the agreements, conditions, covenants, provisions and stipulations of this Deed of Trust and the other Loan Documents to which it is a party. Grantor shall timely perform all of its obligations and duties as landlord under any Leases of any portion of the Deed of Trust Property now or hereafter in effect.

2. Warranty of Title. Grantor warrants to Beneficiary that Grantor possesses good and marketable, unencumbered fee simple title to the Deed of Trust Property and every part thereof, except for those title exceptions listed in lender's title insurance policy approved by and issued to Beneficiary insuring the priority of the lien of this Deed of Trust. Grantor shall reimburse Beneficiary for any losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and court costs) incurred by Beneficiary if an interest in the Land or the Deed of Trust Property, other than as permitted hereunder, is claimed by another Person.

3. Installments for Taxes and Other Charges. Upon Beneficiary's request, Grantor shall pay to Beneficiary, monthly, with the monthly installments of interest or principal and interest, (i) an amount equal to one-twelfth (1/12) of the annual real estate taxes, charges, municipal assessments and liens, water and sewer rents, and other governmental levies and all other charges or claims of every nature and kind which may be assessed, levied, imposed, suffered, placed or filed at any time against Grantor, the Deed of Trust Property or any part thereof or against the interest of Beneficiary therein, or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial or other sale and (ii) an amount equal to one-twelfth (1/12) of the annual insurance premiums that will next become due and payable ("Escrow Items"). On demand by Beneficiary from time to time, Grantor shall pay to Beneficiary any additional sums necessary to pay the Escrow Items, all as estimated by Beneficiary. The amounts paid by Grantor shall be security for the Escrow Items and shall be used in payment thereof if Grantor is not otherwise in default under the Loan Documents. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Beneficiary, and no interest shall be payable thereon. If, pursuant to the Loan Documents, the Obligations become due and payable, Beneficiary shall have the right, at its election, to apply any amount of Escrow Items held by Beneficiary against the Obligations. At Beneficiary's option, Beneficiary from time to time may waive, and after any such waiver may reinstate, the provisions of this Section requiring the monthly payments of Escrow Items.

4. Documentary and Other Stamps. If at any time the United States, the state in which the Deed of Trust Property is located or any political subdivision thereof, or any department or bureau of any of the foregoing shall require documentary, revenue or other stamps or taxes on the Note or this Deed of Trust, Grantor on demand shall pay for them with any interest or penalties payable thereon.

5. Security Agreement. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code in effect in the state where the Land is situated and Grantor hereby grants to Beneficiary a security interest in Grantor's interest in all existing and future fixtures and other personal property (and the proceeds thereof) included in the Deed of Trust Property which might be deemed "personal property." Upon any Event of Default under this Deed of Trust, Beneficiary shall have, in addition to any other rights and remedies under the Loan Documents, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to the fixtures. This Deed of Trust is effective as a financing statement which is filed as a "fixture filing" pursuant to Section 9-502 (or any other applicable section) of the Uniform Commercial Code from the date of recordation of this Deed of Trust with respect to the following types of goods which are or will be fixtures related to the Deed of Trust Property:

Fixtures, equipment, appliances and furnishings and the items set forth in the granting clauses of this Deed of Trust and on Exhibit B hereto.

For the purpose of this Paragraph, Grantor is the Debtor, and Beneficiary is the Secured Party and their addresses are as set forth in the recitals of this Deed of Trust. The record owner of the Land and the Deed of Trust Property is Grantor.

6. Compliance with Law and Other Matters.

(a) Grantor has and shall continue to comply with all Legal Requirements relating to Grantor, the Deed of Trust Property and the use and occupancy of the Deed of Trust Property.

(b) Grantor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Deed of Trust Property or any part thereof, without the prior written consent of Beneficiary. Grantor will not seek any variance under any existing zoning ordinance that could result in the use of the Deed of Trust Property or any part thereof becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation. Grantor will not allow the Deed of Trust Property or any part thereof to be used in any manner that could result in the use of the Deed of Trust Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation.

(c) Grantor will comply with all restrictive covenants, easement agreements and other recorded documents affecting the Deed of Trust Property. Grantor will not record or permit to be recorded any document, instrument, agreement or other writing against the Deed of Trust Property without the prior written consent of Beneficiary.

(d) Grantor shall pay when due all utility charges which are incurred by Grantor, whether public or private and whether or not such charges are or may become liens on the Deed of Trust Property.

(e) Grantor agrees to subject to the lien of this Deed of Trust, in a form reasonably satisfactory to Beneficiary, all additional strips, gores, or parcels of land acquired by Grantor or any leasehold interest therein acquired by Grantor, which adjoin the Deed of Trust Property, and all additional interest in and easements, rights and appurtenances to the Deed of Trust Property above described and in and to said strips, gores and parcels, and to execute and deliver to Beneficiary such security agreements and extensions thereof as Beneficiary reasonably may request and promptly to pay Beneficiary's reasonable costs (including, without limitation, reasonable attorneys' fees and disbursements) in connection therewith and the title insurance premiums necessary to insure such additional land is encumbered by this Deed of Trust as a first lien thereon.

(f) While an Event of Default exists, Grantor agrees to deliver to Beneficiary, within fifteen (15) days after written request by Beneficiary, any and all plans, specifications, renderings, studies, analyses, reports or evaluations in the possession of Grantor with respect to the physical condition of, or the development or use of, the Deed of Trust Property or any part thereof.

(g) The Deed of Trust Property is used exclusively for retail purposes and other appurtenant and related uses. Grantor shall not suffer or permit the Deed of Trust Property to be used by the public in such manner as might reasonably tend to impair Grantor's title to the Deed of Trust Property or any portion thereof, or in such manner as might reasonably make possible a right or rights of adverse usage or adverse possession by the public, as such, or of implied dedication of the Deed of Trust Property or any portion thereof.

(h) Grantor shall not suffer, permit, consent to or initiate the joint assessment of the Land or the Deed of Trust Property (i) with any other real property constituting a tax lot separate from the Land or the Deed of Trust Property and (ii) with respect to which any portion of the Land or the Deed of Trust Property may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Land or the Deed of Trust Property.

(i) Grantor shall keep and maintain all Licenses (as defined below) necessary for the operation of the Deed of Trust Property as set forth in subsection (g) above.

(j) Grantor shall continue to engage in the business presently conducted by it as and to the extent the same is necessary for the ownership, maintenance, management and operation of the Deed of Trust Property. Grantor shall qualify to do business and shall remain in good standing under the laws of the State in which the Deed of Trust Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Deed of Trust Property.

7. Required Notices. Grantor shall notify Beneficiary promptly of the occurrence of any of the following:

(a) A fire or other casualty causing damage in excess of \$25,000.00 to the Deed of Trust Property;

(b) Receipt of notice of eminent domain proceedings or of any actual or threatened condemnation of the Deed of Trust Property;

(c) Receipt of a notice from any governmental authority relating to the condition, structure, use or occupancy of the Deed of Trust Property or any real estate adjacent to the Deed of Trust Property;

(d) Receipt of any notice of default or threatened default, notice of lease termination or similar material notice from a tenant under any of the Leases; or

(e) A material change in the occupancy of the Deed of Trust Property.

8. Condemnation.

(a) In the event of any condemnation or taking of any part of the Deed of Trust Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Deed of Trust Property by any public or quasi-public authority or corporation, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Grantor or the Deed of Trust Property, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit) including, without limitation, attorneys' fees and expenses incurred by Beneficiary in connection with the collection of such proceeds, shall be applied as set forth in this Section. No settlement for the damages sustained shall be made by Grantor without Beneficiary's prior written approval, which approval shall not be unreasonably withheld. All of the proceeds (i) are hereby assigned to and shall be paid to Beneficiary and (ii) shall be applied in the order and in the amounts that Beneficiary, in Beneficiary's sole discretion, may elect, to the payment of the Obligations secured by this Deed of Trust. Notwithstanding the foregoing sentence and provided that no Event of Default has occurred and is continuing, if Beneficiary determines that the Deed of Trust Property can be restored to an economically viable condition not later than ninety (90) days prior to the maturity date of the Note, Beneficiary shall make the net condemnation proceeds available to Grantor, in advance,

for the sole purpose of altering, restoring or rebuilding any part of the Deed of Trust Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Deed of Trust Property. If Beneficiary elects to use any portion of any condemnation award or compensation to restore or rebuild any part of the Deed of Trust Property in accordance with the preceding sentence, Beneficiary shall disburse the proceeds and the restoration shall be completed in accordance with the provisions of Section 5.01(c) of the Loan Agreement. Grantor, upon request by Beneficiary, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of any awards and compensation described in this Section 8(a) to Beneficiary free and clear of any Liens of any kind or nature whatsoever.

(b) If, prior to the receipt of the proceeds by Beneficiary the Deed of Trust Property shall have been sold on foreclosure of this Deed of Trust, Beneficiary shall have the right to receive the proceeds to the extent of:

(i) the full amount of all such proceeds if Beneficiary is the successful purchaser at the foreclosure sale, or

(ii) if anyone other than Beneficiary is the successful purchaser at the foreclosure sale, any deficiency (as hereinafter defined) due to Beneficiary in connection with the foreclosure sale, with interest thereon at the highest applicable rate set forth in the Note, and reasonable counsel fees, costs and disbursements incurred by Beneficiary in connection with collection of such proceeds of condemnation and the establishment of such deficiency. For purposes of this subsection (b)(ii), the word "deficiency" shall be deemed to mean the difference between (A) the net sale proceeds actually received in cash by Beneficiary as a result of such foreclosure sale less any costs and expenses incurred by Beneficiary in connection with enforcement of its rights under the Loan Agreement, this Deed of Trust and the other Loan Documents and (B) the aggregate amount of the Obligations.

(c) Beneficiary shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Beneficiary or Grantor, for which Beneficiary is hereby appointed irrevocably as attorney-in-fact for Grantor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including, without limitation, reasonable counsel fees and expenses, shall be paid first out of the proceeds, and only the excess, if any, paid to Beneficiary shall be credited against the amounts due under this Deed of Trust.

(d) Nothing herein shall limit the rights otherwise available to Beneficiary, at law or in equity, including, without limitation, the right to intervene as a party to any condemnation proceeding.

9. Right to Remedy Defaults. If Grantor should fail to pay corporate taxes, Taxes, sums due under any Permitted Lien against the Deed of Trust Property, or insurance premiums, or any sums payable by Grantor pursuant to the Leases, or fail to make necessary repairs to the Deed of Trust Property, or permit waste to the Deed of Trust Property, or shall otherwise fail to perform its obligations under this Deed of Trust, Beneficiary, at its election, after giving Grantor three (3) Business Days' notice of such failure (except in an emergency in which case no such notice shall be required), shall have the right to make any payment or expenditure and to take any action which Grantor should have made or taken, or which Beneficiary deems advisable to protect the security of this Deed of Trust or the Deed of Trust Property, without prejudice to any of Beneficiary's rights or remedies available hereunder or otherwise, at law or in equity. Such payment by Beneficiary shall not release Grantor from Grantor's obligations or constitute a waiver of Grantor's default under this Deed of Trust. All such sums, as well as costs, advanced by Beneficiary pursuant to this Deed of Trust shall be due immediately from Grantor to Beneficiary, shall be secured by this Deed of Trust and the lien therefor shall relate back to the date of this Deed of Trust, and such sums, as well as costs, shall bear interest at the highest applicable default rate



under the Loan Agreement from the date of payment by Beneficiary until the date of repayment to Beneficiary.

10. Events of Default. Each of the following shall constitute an "Event of Default" under this Deed of Trust:

(a) Grantor's non-performance or non-compliance with any of the other agreements, conditions, covenants, provisions or stipulations contained in this Deed of Trust and the continuance of such default for thirty (30) days after the occurrence thereof; or

(b) The occurrence of an Event of Default under the Loan Agreement or any other Loan Document.

11. Remedies.

(a) Upon the occurrence of an Event of Default, Beneficiary may exercise all rights and remedies under the Loan Agreement.

(b) Without limiting the foregoing, upon the occurrence of an Event of Default, Trustee and/or Beneficiary may also immediately pursue one or more of the following remedies:

(i) Foreclosure. Trustee may institute an action of foreclosure against the Deed of Trust Property, in whole or in part, or take such other action at law or in equity for the enforcement of this Deed of Trust and realization on any or all of the deed of trust security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Obligations, with interest at the highest applicable default rate set forth in the Loan Agreement (or as otherwise provided by applicable law), together with all other sums due by Grantor in accordance with the provisions of this Deed of Trust and the other Loan Documents, including, without limitation, all sums which may have been loaned by Beneficiary to Grantor on or after the date of this Deed of Trust, and all sums which may have been advanced by Beneficiary for Taxes, payments on Liens, insurance premiums, utilities or repairs to the Deed of Trust Property and other sums which Beneficiary is permitted to advance pursuant to the terms of this Deed of Trust and/or applicable law, all costs of suit, together with interest at such rate on any judgment obtained by Trustee or Beneficiary from and after the date of any sheriff or other judicial sale until actual payment is made of the full amount due Beneficiary, and all Expenses.

(ii) Possession. Trustee or Beneficiary may enter into possession of the Deed of Trust Property, with or without legal action, collect therefrom all Rents (which term shall include, without limitation, sums payable for use and occupation) and, after deducting all costs of collection and administration expenses, apply the net rentals to any or all of the following in such order and amounts as Beneficiary, in Beneficiary's sole discretion, may elect: the payment of any sums due under any Lien, Taxes, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Deed of Trust Property, and on account and in reduction of the Obligations; in and for that purpose, Grantor hereby assigns to Beneficiary all Rents due and to become due under the Leases or rights to use and occupy the Deed of Trust Property hereafter created, as well as all rights and remedies provided in such Leases or at law or in equity for the collection of the Rents. The taking of possession and collections of Rents by Beneficiary and/or Trustee shall not be construed to be an affirmation of any Leases or acceptance of attornment with respect to any Leases of all or any portion of the Deed of Trust Property. Beneficiary and/or Trustee, in its discretion, may, as attorney in fact or agent of Grantor, or in its own name as Beneficiary and/or Trustee and under the powers herein granted, hold, operate, manage and control the Deed of Trust Property and conduct the business, if any, thereof, either personally or by its

agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the Rents of the Deed of Trust Property, including, without limitation, actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to: (i) cancel or terminate any Leases for any cause or on any ground which would entitle Grantor to cancel the same; (ii) elect to disaffirm any Leases which are then subordinate to the lien of this Deed of Trust; (iii) extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Grantor and all persons whose interests in the Deed of Trust Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Deed of Trust indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (iv) enter into any management, leasing or brokerage agreements covering the Deed of Trust Property.

(c) Trustee and/or Beneficiary shall have the right, from time to time, to bring an appropriate action to recover any Obligations without prejudice to the right of Trustee and/or Beneficiary thereafter to bring an action of foreclosure, or any other action, for any Event of Default by Grantor existing at the time the earlier action was commenced.

(d) Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of this Deed of Trust, or pursuant to any other judicial proceedings under this Deed of Trust, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Trustee, in its sole discretion, may elect.

(e) Upon, or at any time after the filing of an action to foreclose this Deed of Trust, the court in which such action is filed may, at the request of Trustee, appoint a receiver of the Deed of Trust Property. Such appointment may be made either before or after any sale of the Deed of Trust Property, without notice to Grantor except as required by applicable law, without regard to the solvency or insolvency of Grantor at the time of application for such receiver and without regard to either the then value of the Deed of Trust Property, the adequacy or inadequacy of any remedy available at law, or the solvency or insolvency of any other person liable to pay the Obligations. Such receiver shall have the power to perform all of the acts permitted Trustee pursuant to subsection (b)(ii) above and such other powers which may be necessary or are customary in such cases for the protection, possession, control, management and operation of the Deed of Trust Property during such period.

(f) Trustee and/or Beneficiary may, at their sole option, disaffirm and cancel any Leases which are subordinate to this Deed of Trust and not subject to a non-disturbance agreement at any time before the expiration of sixty (60) days after Beneficiary acquires the legal title to the Deed of Trust Property by sheriff's deed or any other transfer of legal title to the Deed of Trust Property pursuant to the exercise of a remedy hereunder or otherwise, even though Beneficiary shall have enforced such Leases, collected Rents thereunder or taken any action that might be deemed by law to constitute an affirmation of the Leases. Such disaffirmance shall be made by written notice addressed to the applicable tenants at the Deed of Trust Property or, at Beneficiary's option, such other address of such tenants as may be provided in the Leases.

(g) Grantor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of a Lien junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Deed of Trust Property

shall be sold in the event of any sale or sales pursuant hereto and to have any of the Deed of Trust Property and/or any other property now or hereafter constituting security for any of the Obligations marshalled upon any foreclosure of this Deed of Trust or of any other security for any of said indebtedness.

(h) If Grantor is an occupant of part or all of the Deed of Trust Property, Grantor shall immediately upon any acceleration after an Event of Default hereunder surrender the possession thereof to Beneficiary and, if Grantor remains in possession, such possession shall be as tenant at sufferance of Beneficiary, and Grantor shall pay monthly in advance to Beneficiary the Rent for the premises so occupied as Beneficiary may reasonably demand, and in default of so doing Grantor may be dispossessed by summary proceedings or otherwise with or without any action being brought to foreclose this Deed of Trust and without applying for a receiver to collect the Rents. In case of the appointment of a receiver of the Rents of the Deed of Trust Property, the covenants of this Section may be enforced by such receiver.

(i) Upon any sale made under or by virtue of this Section 11, Beneficiary may bid for and then acquire the Deed of Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations of Grantor the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Trustee and/or Beneficiary is authorized to deduct under this Deed of Trust or under any of the Loan Documents.

(j) Trustee and/or Beneficiary may sell the Deed of Trust Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, including, without, limitation, pursuant to the non-judicial foreclosure procedures set forth in the applicable law of the State in which the Deed of Trust Property is located, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Deed of Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Deed of Trust Property.

(k) If Trustee shall have the right to foreclose this Deed of Trust, Grantor authorizes Trustee at its option to foreclose this Deed of Trust subject to the rights of any tenants of the Deed of Trust Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Grantor as a defense to any proceeding instituted by Trustee to collect the Obligations or any deficiency remaining unpaid after the foreclosure sale of the Deed of Trust Property, it being expressly understood and agreed, however, that nothing herein contained shall prevent Trustee from asserting in any proceeding disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale, that any such tenancies adversely affect the value of the Deed of Trust Property.

## 12. Rights and Remedies Cumulative.

(a) The rights and remedies of Trustee and/or Beneficiary as provided in this Deed of Trust and the other Loan Documents and in the warrants attached thereto or contained therein shall be cumulative and concurrent; may be pursued separately, successively or together against Grantor or against the Deed of Trust Property, or both, at the sole discretion of Trustee and/or Beneficiary, and may be exercised as the need to exercise such rights and remedies shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(b) Any failure by Beneficiary to insist upon strict performance by Grantor of any of the provisions of this Deed of Trust or the other Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Deed of Trust or the other Loan Documents, and Beneficiary shall have the right thereafter to insist upon strict performance by Grantor of any and all of them.

(c) Neither Grantor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Deed of Trust shall be relieved or discharged of such obligation by reason of the failure of Trustee and/or Beneficiary to comply with any request of Grantor or of any other person so obligated to take action to foreclose on this Deed of Trust or otherwise enforce any provisions of this Deed of Trust or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Obligations, or by reason of consenting to the granting of any easements or recordation of restrictive covenants affecting the Deed of Trust Property or by reason of any agreement or stipulation between any subsequent owner of the Deed of Trust Property and Beneficiary extending the time or amount of payment or modifying the terms of this Deed of Trust or the other Loan Documents without first having obtained the consent of Beneficiary or such other person; and in the latter event Grantor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Beneficiary.

(d) Beneficiary may release, regardless of consideration, any part of the security held for the Obligations without, as to the remainder of the security, in any way impairing or affecting the lien of this Deed of Trust or its priority over any subordinate lien.

(e) For payment of the Obligations secured hereby Beneficiary may resort to any other security therefor held by Beneficiary in such order and manner as Beneficiary may elect.

(f) The receipt by Beneficiary of any sums from Grantor after the date on which Beneficiary elects to accelerate the Obligations by reason of an Event of Default hereunder shall not constitute a cure or waiver of such default or a reinstatement of this Deed of Trust or the other Loan Documents unless Beneficiary expressly agrees, by written notice to Grantor, that such payment shall be accepted as a cure or waiver of the default.

13. Grantor's Waivers. Grantor hereby waives and releases to the extent permitted by applicable law:

(a) All procedural errors, defects and imperfections in any proceeding instituted by Trustee and/or Beneficiary under the Note, this Deed of Trust or any other Loan Document;

(b) All benefit that might accrue to Grantor by virtue of any present or future law, exempting the Deed of Trust Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and

(c) Unless specifically required herein or in any other Loan Document, all notices of Grantor's default or of Beneficiary's election to exercise, or Beneficiary's actual exercise of, any option under the Leases, the Note, this Deed of Trust or any other Loan Document.

14. Further Assurances. Grantor will execute and deliver such further instruments and perform such further acts as may be reasonably requested by Beneficiary from time to time to confirm the priority of the lien created by this Deed of Trust on any property, rights or interest encumbered or intended to be encumbered by the lien of this Deed of Trust or the other Loan Documents.

15. Representations and Warranties. Grantor represents, warrants and covenants to and with Beneficiary that:

(a) There are no pending or, to the best of Grantor's knowledge, threatened proceedings or actions to revoke, invalidate, rescind, or modify the zoning classification or status of the Land or the Deed of Trust Property, or any building, occupancy or other permits heretofore issued with respect thereto, or asserting that such zoning or permits do not permit either the current or proposed use of the Land or the Deed of Trust Property.

(b) There are no Leases or other arrangements for occupancy of space within the Land or the Deed of Trust Property other than Leases previously furnished to Beneficiary. The certified rent roll delivered to Beneficiary is true, complete and correct in all material respects as of the date set forth herein. No Person has any possessory interest in the Land or the Deed of Trust Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to the best of Grantor's knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll or the tenant estoppels certificates delivered to Beneficiary) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No rent has been paid more than one month in advance of its due date, except as disclosed in the tenant estoppels certificates delivered to Beneficiary. There has been no prior sale, transfer or assignment, hypothecation or pledge by Grantor of any Lease or Rents which will be outstanding following the funding of the Term Loan, other than those being assigned to Beneficiary concurrently herewith. No tenant under any Lease has a right or option to purchase such Lease or otherwise purchase all or any part of the Land or the Deed of Trust Property or any other Collateral.

(c) No condemnation by any governmental authority of any portion of the Land or the Deed of Trust Property or any roadways or other access ways abutting the Land or the Deed of Trust Property, has commenced or, to the best of Grantor's knowledge, is contemplated.

(d) The Deed of Trust Property have access to and adequate supply of water, electricity, gas, storm and sanitary sewerage and other required public utilities to serve the present and contemplated uses of the Land and the Deed of Trust Property, fire and police protection, and free means of appropriate vehicular and pedestrian access between the Land, the Deed of Trust Property and public ways and highways; and none of the foregoing will be delayed or impeded by virtue of any requirements under any applicable laws including, without limitation, environmental protection laws; and that all of the foregoing comply with all applicable laws including, without limitation, environmental protection laws. All utilities necessary to the existing use of the Land and the Deed of Trust Property are located either in the public right-of-way abutting the Land and the Deed of Trust Property (which are connected so as to serve the Land and the Deed of Trust Property without passing over other property) or in recorded easements serving the Land and the Deed of Trust Property and such easements are set forth and insured by the title insurance policy insuring the lien of this Deed of Trust. All roads necessary for the use of the Land and the Deed of Trust Property for their current purposes have been contemplated and, if necessary, dedicated to public use.

(e) The Improvements located on the Land and in the Deed of Trust Property do not encroach upon any building restriction line, setback line, side yard line, or any recorded or visible easement (or other easement of which Grantor has knowledge or has reason to believe may exist with respect to the Land and the Deed of Trust Property), and no Improvements on adjoining properties encroach upon the Land or the Deed of Trust Property, and no easements or other encumbrances upon the Land or the Deed of Trust Property encroach upon any of the Improvements, in each case except as disclosed in the title policy insuring the lien of this Deed of Trust or survey provided to Beneficiary.

(f) None of the Improvements located on the Land or in the Deed of Trust Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards.

(g) To the best of Grantor's knowledge, all Improvements located on the Land and on the Deed of Trust Property including, without limitation, all buildings, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and other structural components are in good condition, order and repair in all material respects; to the best of Grantor's knowledge, there exists no structural or other material defects or damages in or to the Deed of Trust Property, whether latent or otherwise, and Grantor has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Deed of Trust Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(h) If any construction has occurred at the Land or the Deed of Trust Property within the last twelve (12) months, the construction has been completed substantially in accordance with the applicable laws and governmental approvals and, all such improvements are in good working order and are structurally sound and fit for their current use.

(i) The Land and the Deed of Trust Property are comprised of one or more contiguous parcels and are taxed separately without regard to any other property, and for all purposes the Deed of Trust Property may be mortgaged, conveyed, and otherwise dealt with as an independent parcel.

(j) Grantor is not a "foreign person" within the meaning of Sections 1445 or 7701 of the Internal Revenue Code.

(k) All certifications, permits, licenses and approvals including, without limitation, certificates of completion and occupancy permits required of Grantor for the legal use, occupancy and operation of the Deed of Trust Property as a retail facility (collectively, the "Licenses") have been obtained and are in full force and effect. The use being made of the Deed of Trust Property is in conformity with the certificate of occupancy issued for the Deed of Trust Property.

(l) All transfer taxes, deed stamps, intangible taxes and other amounts in the nature of transfer taxes required to be paid by any Person under applicable laws currently in effect in connection with the transfer of the Deed of Trust Property to Grantor have been paid. All mortgage, mortgage recording, stamp, intangible and other similar taxes required to be paid by any Person under applicable laws currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, this Deed of Trust, have been paid.

(m) There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Land or the Deed of Trust Property, nor are there any contemplated improvements to the Land or the Deed of Trust Property that may result in such special or other assessments.

16. Severability and Savings Clauses. If any provision of this Deed of Trust is held to be invalid or unenforceable by a Court of competent jurisdiction, the other provisions of this Deed of Trust shall remain in full force and effect and shall be liberally construed in favor of Beneficiary in order to effect the remaining provisions of this Deed of Trust.

17. Commercial Loan. Grantor hereby stipulates and warrants that the loan secured hereby is a commercial loan, and that all of the proceeds of such loan will be used solely to acquire or carry on a business or commercial enterprise.

18. Notices.

(a) All notices, consents and other communications provided for hereunder shall be in writing (including fax communication and any other method of communication authorized by Beneficiary) and faxed or sent by a reputable overnight courier or delivery service to Beneficiary or Grantor at the address or fax number set forth below, or to Beneficiary or Grantor at such other address or fax number as shall be designated by such party in a written notice to the other party or, in the case of a change of Grantor's address or fax number, as may be requested by Grantor by telephonic notice and confirmed in writing by Beneficiary.

If to Beneficiary: Morgan Stanley Private Bank, National Association  
c/o Morgan Stanley Smith Barney LLC  
2000 Westchester Avenue, Floor 2NE  
Purchase, New York 10577  
Attention: Portfolio Management  
Telecopy No.: (914) 225-9110

with copies to: Cassin & Cassin LLP  
2900 Westchester Avenue, Suite 402  
Attention: Michael J. Hurley, Esq.  
Telecopy No.: (914) 253-5010

If to DKM2 Borrower: 777 NE 2nd Street, Suite 200  
Corvallis, Oregon 97330  
Attention: Darren E. Dickerhoof  
Telecopy No.: (541) 754-3690

If to L-39 Borrower 777 NE 2<sup>nd</sup> Street, Suite 200  
Corvallis, Oregon 97330  
Attention: Matthew G. Dickerhoof  
Telecopy No.: (541) 754-3690

If to K Falls Borrower 1100 East 8<sup>th</sup> Street  
Austin, Texas 78702  
Attention: Ben Wahlstrom  
Email: BenW@korvis.com

If to Red Knight Borrower 7250 NE Avalon Drive  
Corvallis, Oregon 97330  
Attention: Ricard A. Carone  
Email: RichC@korvis.com

With copies to:

Williams Kastner Greene & Markley  
1515 SW Fifth Avenue, Suite 600  
Portland, Oregon 97201-5449  
Attention: David P. Weiner  
Telecopy No.: (503) 222-7261

(b) Any notice sent by Beneficiary or Grantor by any of the above methods shall be deemed to be given when so received by Beneficiary or Grantor.

(c) Beneficiary shall be fully entitled to rely upon any facsimile transmission or other writing purported to be sent by any authorized officer of Beneficiary as being genuine and authorized.

19. Time of Essence. Time shall be of the essence of each provision of this Deed of Trust of which time is an element.

20. Covenant Running with the Land. Any act or agreement to be done or performed by Grantor shall be construed as a covenant running with the land and shall be binding upon Grantor and its successors and assigns as if they had personally made such agreement.

21. Amendment. This Deed of Trust cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change or amendment is sought to be enforced.

22. Applicable Law. With respect to matters of construction, validity and performance, this Deed of Trust and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable law of the United States of America, except that at all times the provisions for the creation, perfection and enforcement of the interests created pursuant hereto and pursuant to the other Loan Documents with respect to the Deed of Trust Property shall be governed by and construed according to the law of the state in which the Deed of Trust Property is located, it being understood that, to the fullest extent permitted by the law of the State of New York, the law of the State of New York (without regard to principles of conflict laws) shall govern the construction, validity and enforceability of all Loan Documents and all of the obligations arising hereunder or thereunder. To the fullest extent permitted by law, Grantor hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Deed of Trust, the Note or any other Loan Document.

23. Definitions and Interpretation. Whenever used in this Deed of Trust, unless the context clearly indicates a contrary intent:

(a) **"Grantor"** shall mean the person who executes this Deed of Trust as "Grantor" and any subsequent owner of the Deed of Trust Property and its respective heirs, executors, administrators, successors and assigns;

(b) **"Beneficiary"** shall mean the person specifically named herein as "Beneficiary" or any subsequent holder of this Deed of Trust;

(c) **"Expenses"** shall mean all out-of-pocket fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Beneficiary in making, funding, administering or modifying the Term Loan, in negotiating or entering into any workout of the Term Loan, or in exercising or enforcing any rights, powers and



remedies provided in this Deed of Trust or any of the other Loan Documents, including, without limitation, reasonable attorneys' fees and expenses, court costs, receiver's fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, all or any part of the Deed of Trust Property.

(d) **"Impositions"** means all ground rents and all taxes (including, without limitation, all real estate, ad valorem or value added, sales (including, without limitation, those imposed on lease rentals), use, single business, gross receipts, intangible transaction privilege, privilege, license or similar taxes), assessments (including, without limitation, to the extent not discharged prior to the date hereof, all assessments for public improvements or benefits, whether or not commenced or completed within the term of the Term Loan), water, sewer or other Rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Deed of Trust Property, (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (i) Grantor (including, without limitation, all income, franchise, single business or other taxes imposed on Grantor for the privilege of doing business in the jurisdiction in which the Deed of Trust Property is located) or Beneficiary (including, without limitation, taxes resulting from future changes in law which impose upon Beneficiary or any trustee an obligation to pay any property taxes or other taxes or which otherwise adversely affect Beneficiary's interests), (ii) the Deed of Trust Property or any part thereof, or (iii) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Deed of Trust Property or the leasing or use of the Deed of Trust Property or any part thereof, or the acquisition or financing of the acquisition of the Deed of Trust Property by Grantor.

(e) The use of any gender shall include all genders;

(f) The singular number shall include the plural and the plural the singular as the context may require.

(g) The following phrase shall have the following meanings: (i) "including" shall mean "including but not limited to," (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions," (iii) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust," (iv) "obligation" shall mean "obligation, duty, covenant and/or condition," (v) "any of the Deed of Trust Property" shall mean "the Deed of Trust Property or any part thereof or interest therein," and (vi) "Partnership" shall mean "partnership or joint venture" and "partner" shall mean "partner or joint venturer."

(h) Any act which Beneficiary is permitted to perform under the Loan Documents may be performed at any time and from time to time by Beneficiary or any person or entity designated by Beneficiary.

(i) Any act which Grantor is required to perform under the Loan Documents shall be performed at Grantor's sole cost and expense.

(j) Any act which is prohibited to Grantor under the Loan Documents is also prohibited to all tenants or other occupants of any of the Land and the Deed of Trust Property.

(k) The captions preceding the text of the Sections or subsections of this Deed of Trust are inserted only for convenience of reference and shall not constitute a part of this Deed of Trust, nor shall they in any way affect its meaning, construction or effect.

(l) All Exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Deed of Trust.

(m) This Deed of Trust may be executed in counterparts, each of which, together with all counterparts, shall be deemed one Deed of Trust. This Deed of Trust shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

(n) Definitions contained in this Deed of Trust which identify documents, including the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments and supplements thereto entered into from time to time to satisfy the requirements of this Deed of Trust or otherwise with the consent of Beneficiary. Reference to this Deed of Trust contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Deed of Trust.

24. No Third Party Benefits. This Deed of Trust and the other Loan Documents are made for the sole benefit of Grantor and Beneficiary and their successors and assigns, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Beneficiary elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Beneficiary shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Beneficiary's actions or omissions pursuant thereto or otherwise in connection with the transaction evidenced by the Note and secured by this Deed of Trust.

25. Failure of Beneficiary to Perform.

(a) Beneficiary shall not be liable to Grantor for consequential damages, whatever the nature of a breach by Beneficiary of its obligations under this Deed of Trust, or any of the other Loan Documents, and Grantor for itself and all parties claiming through Grantor hereby waives all claims for consequential damages.

(b) Any action taken by Beneficiary to inspect the Deed of Trust Property, and to approve leases and all other documents and instruments submitted to Beneficiary, will be exercised and taken by Beneficiary for its own protection only and may not be relied upon by Grantor any other party for any purposes whatever; and Beneficiary shall not be deemed to have assumed any responsibility to Grantor any other party with respect to any such action herein authorized or taken by Beneficiary with respect to the proper construction of improvements on the Deed of Trust Property, or performance under any lease or other agreement. Any review, investigation or inspection conducted by Beneficiary, any architectural or engineering consultants retained by Beneficiary or any agent or representative of Beneficiary in order to verify independently Grantor's satisfaction of any conditions precedent to loan disbursements, Grantor's performance of any of the covenants, agreements and obligations of Grantor, or the truth of any representations and warranties made by Grantor hereunder or under any of the Loan Documents (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Beneficiary of) (i) any of Grantor's representations and warranties under this Deed of Trust or any of the other Loan Documents or Beneficiary's reliance thereon or (ii) Beneficiary's reliance upon any certifications of Grantor under the Loan Documents or any other facts information or reports furnished to Beneficiary by Grantor.

26. WAIVER OF TRIAL BY JURY. GRANTOR AND BENEFICIARY EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH

ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS.

27. Consequential Damages. Neither Beneficiary nor any agent or attorney of Beneficiary, shall be liable for any consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

28. Copy of Deed of Trust. Grantor hereby declares and acknowledges that it has received, without charge, a true copy of this Deed of Trust.

29. Notice to Prior Lien Holders. Grantor hereby authorizes Beneficiary, without liability and at Beneficiary's sole discretion, to give notice in form and substance satisfactory to Beneficiary of the lien and security interest created by this Deed of Trust to a holder of a previously recorded deed of trust which is a lien on the Deed of Trust Premises, in order, among other things, to subordinate further advances by such deed of trust holder.

30. General Indemnification. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as defined below) from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including, without limitation, attorneys' fees and expenses and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following, except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) ownership of this Deed of Trust, the Deed of Trust Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations, and the Note, this Deed of Trust or any other Loan Documents; (c) any and all lawful action that may be taken by Beneficiary in connection with the enforcement of the provisions of this Deed of Trust or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Grantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Deed of Trust Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Deed of Trust Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Deed of Trust Property or any part thereof; (g) any failure of the Deed of Trust Property to be in compliance with any applicable laws; (h) the enforcement by any Indemnified Party of the provisions of this Section 30; (i) any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (j) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Deed of Trust; or (k) any misrepresentation made by Grantor in this Deed of Trust or any other Loan Document. Any amounts payable to Beneficiary by reason of the application of this Section shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Beneficiary until paid in full to

Beneficiary. For purposes of this Section, the term "**Indemnified Parties**" means Beneficiary and any directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of Beneficiary or any and all of the foregoing.

31. **Exculpation.** The provision of Section 7.21 of the Loan Agreement are hereby incorporated by reference into this Deed of Trust to same extent and with the same force as fully set forth herein.

32. **State Specific Provisions.** The following provisions shall govern and control in the event of a conflict with any other provision of this Deed of Trust:

(a) **STANDARD OF PERFORMANCE UNDER ARTICLE 9 OF ORS CH. 79.** THE STANDARD BY WHICH BENEFICIARY'S RIGHTS AND DUTIES UNDER ARTICLE 9 OF ORS CH. 79, INCLUDING BUT NOT LIMITED TO PART 5 THEREOF, SHALL BE MEASURED IS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(b) **NON-AGRICULTURAL USE.** THE PROPERTY IS NOT USED FOR AGRICULTURAL, TIMBER OR GRAZING PURPOSES.

(c) **FORECLOSURE SALE.** BENEFICIARY SHALL HAVE THE RIGHT TO PROCEED AS TO THE PERSONAL PROPERTY IN ACCORDANCE WITH BENEFICIARY'S RIGHTS AND REMEDIES IN RESPECT TO REAL PROPERTY OR SELL THE PERSONAL PROPERTY SEPARATELY AND WITHOUT REGARD TO THE REMAINDER OF THE PROPERTY IN ACCORDANCE WITH BENEFICIARY'S RIGHTS AND REMEDIES PROVIDED BY THE OREGON UNIFORM COMMERCIAL CODE AS WELL AS OTHER RIGHTS AND REMEDIES AVAILABLE AT LAW OR IN EQUITY.

(d) **NO ORAL AGREEMENTS.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY 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 BENEFICIARY TO BE ENFORCEABLE.

(e) **Maturity.** The maturity date of the Note is the earlier of (a) February 22, 2029 and (b) the date the loan is accelerated pursuant to the loan documents or applicable law.

(f) **Nonresidential Trust Deed.** Grantor warrants that this Deed of Trust is not and will at all times continue not to be a residential deed of trust, as that term is defined in ORS 86.705(3).

(g) Notwithstanding anything to the contrary in the Loan Agreement, the following provisions shall apply:

#### **WARNING**

**UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE PROPERTY BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY DAMAGE COVERAGE ELSEWHERE.**

**YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.**

**THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

(h) As used in this Deed of Trust, the Note, and in the Loan Documents, "attorneys' fee" shall include attorneys' fees, if any, which shall be incurred whether or not legal action is commenced and any such fees incurred at trial, arbitration interpleader, bankruptcy, hearing, or any judicial proceeding, and an appeal.

(i) BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTION 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT


THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be duly executed the day and year first above written.

**GRANTOR:**

**DKM2, LLC**, an  
Oregon limited liability company

By:   
Name: Darren E. Dickerhoof  
Title: Manager

**ACKNOWLEDGEMENT**

STATE OF OREGON )  
 ) ss.  
COUNTY OF BENTON )

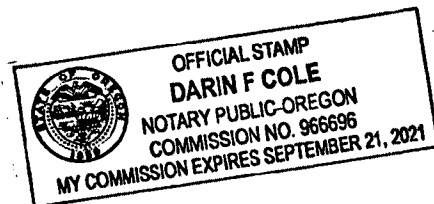
I, DARIN F. COLE, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **DARREN E. DICKERHOOF**, known to me to be the same person whose name is subscribed to the foregoing instrument as the manager of **DKM2, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of February, 2020.

Darin F. Cole  
NOTARY PUBLIC, STATE OF OREGON  
(Name of Notary Public, Print, Stamp or  
Type as Commissioned)

☒ Personally known to me, or  
☐ Produced Identification

(Type of Identification Produced)



**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

GRANTOR:

**L-39, LLC**, an  
Oregon limited liability company

By: *Matthew G. Dickerhoof*  
Name: Matthew G. Dickerhoof  
Title: Sole Member

**ACKNOWLEDGEMENT**

STATE OF )  
 ) ss.  
COUNTY OF )

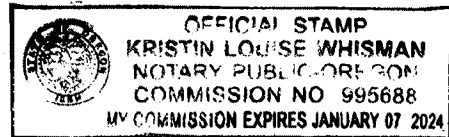
I, Kristin Whisman, Notary Public in and for the said County in the State aforesaid, do hereby certify that **MATTHEW G. DICKERHOOF**, known to me to be the same person whose name is subscribed to the foregoing instrument as the manager of **L-39, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4 day of February, 2020.

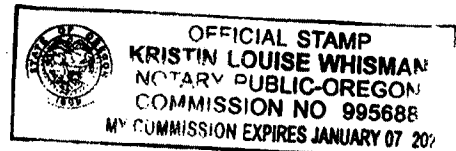
Kristin Whisman  
NOTARY PUBLIC, STATE OF Oregon  
(Name of Notary Public, Print, Stamp or  
Type as Commissioned)

☐ Personally known to me, or  
☒ Produced Identification

Drivers License  
(Type of Identification Produced)



**[SIGNATURE APPEARS ON FOLLOWING PAGE]**






**GRANTOR:**

**KFALLS CENTER, LLC**, an  
Oregon limited liability company

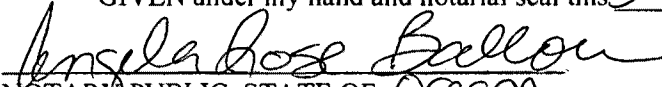
By: **BEN WAHLSTROM REVOCABLE TRUST**, its  
Sole Member

By:   
Name: Ben Wahlstrom  
Title: Trustee

STATE OF Oregon )  
COUNTY OF Deschutes ) ss.

I, Angela Rose Ballou a Notary Public in and for the said County in the State aforesaid, do hereby certify that **BEN WAHLSTROM**, known to me to be the same person whose name is subscribed to the foregoing instrument as the trustee of the **BEN WAHLSTROM REVOCABLE TRUST** the sole member of **KFALLS CENTER, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3<sup>RD</sup> day of February, 2020.

  
NOTARY PUBLIC, STATE OF Oregon

(Name of Notary Public, Print, Stamp or

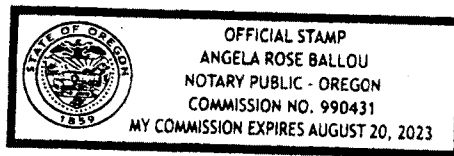
Type as Commissioned)

☐ Personally known to me, or

☒ Produced Identification

Driver License

(Type of Identification Produced)



**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

**GRANTOR:**

**RED KNIGHT, LLC**, an  
Oregon limited liability company

By: Richard A Carone  
Name: Richard A. Carone  
Title: Member

STATE OF OREGON )  
 ) ss.  
COUNTY OF BENTON )

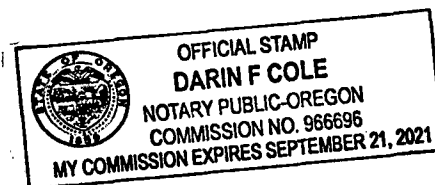
I, DARIN F. COLE, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **RICHARD A. CARONE**, known to me to be the same person whose name is subscribed to the foregoing instrument as the member of **RED KNIGHT, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of February, 2020.

Darin F. Cole  
NOTARY PUBLIC, STATE OF OREGON  
(Name of Notary Public, Print, Stamp or  
Type as Commissioned)

☒ Personally known to me, or  
☐ Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the County of Klamath, State of Oregon, described as follows:

PARCEL 1 OF LAND PARTITION NO. 48-05, A REPLAT OF A PORTION OF LOTS 35 AND 44 OF ENTERPRISE TRACTS LOCATED IN THE WEST 1/2 OF THE NW1/4 OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

LESS AND EXCEPT THAT PORTION DEEDED TO THE CITY OF KLAMATH FALLS AND ITS SUCCESSORS AND ASSIGNS ON JULY 15, 2008 IN 2008-10156, RECORDS OF KLAMATH COUNTY, OREGON.

(EASEMENT PARCEL)

TOGETHER WITH RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT AS DISCLOSED BY DOCUMENT RECORDED DECEMBER 8, 1995 IN VOLUME M95 PAGE 33582, RECORDS OF KLAMATH COUNTY, OREGON.

ALSO TOGETHER WITH NONEXCLUSIVE EASEMENTS FOR COMMON PARKING AND REASONABLE PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS OVER ALL PAVED DRIVEWAYS, ROADWAYS AND WALKWAYS AS PRESENTLY OR HEREAFTER CONSTRUCTED AND CONSTITUTING A PART OF THE COMMON AREA, AND FOR MAINTENANCE AS GRANTED IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED DECEMBER 21, 2005 AS DOCUMENT M05 71541, RECORDS OF KLAMATH COUNTY, OREGON.

## **EXHIBIT "B"**

### **PROPERTY SUBJECT TO SECURITY INTEREST**

Any and all fixtures, appliances, machinery, equipment furnishings and furniture of any nature whatsoever, and other items of personal property and fixtures at any time now or hereafter owned by Grantor/Debtor and now or at any time hereafter installed in, attached to or situated in or upon the land described in Exhibit "A" or the buildings and improvements now erected or to be erected thereon (including, without limitation, communications, computer and security systems and the software system therefor), or used or intended to be used in connection with the real estate, or in the operation or maintenance of the buildings and improvements, plant or business situate or operated thereon (the "Property") or in connection with the conduct of Grantor/Debtor's business whether or not the personal property is or shall be affixed to the Property.

Such personal property and fixtures shall include, without limiting the generality of the foregoing:

All plants, furnaces, boilers, machinery, ranges, engines, stokers, pumps, heaters, tanks, compressors, dynamos, motors, electrical transformers, fittings, siding, pipe, pipe connections, conduits, ducts, partitions, communication systems, storm and screen windows, doors, refrigerators, ovens, kitchen equipment, chests, chairs, desks, bookcases, tables, curtains, hangings, pictures, carpeting, artwork, lighting fixtures and apparatus, furniture, furnishings, elevators and motors, built-in filing cabinets, shelves, water coolers, signs, tools, electrical equipment, and all equipment, appliances and apparatus of every kind and description now or hereafter affixed or attached to or contained within and used or procured for use in connection with said buildings or improvements for heating, cooling, lighting, plumbing, ventilating, sprinkling, irrigating, refrigerating or air conditioning, or for providing water, gas, electricity or other services or for general operation of the buildings and improvements, or the plant or business situate or operated thereon.

All licenses, permits, franchises, trade names, logos, service marks, service contracts, management agreements, telephone numbers, advertising materials, warranties, guarantees, tenant lists, engineering, environmental, marketing and similar studies and appraisals for the Property and all other documents and items relating to the operation of the Property, and all leases and lease guarantees with respect to any part of the Property, and all rents, issues and profits arising out of the operation, use or occupancy of the Property.

All of Grantor's/Debtor's interest in all utility security deposits or bonds for the Property and all security deposits, bonds or other security delivered to any governmental authority in connection with the use, development or operation of the Property.

All of Grantor's/Debtor's books and records relating to the use, operation and occupation of the buildings and the Property including, without limitation, the books and records relating to the operation of Grantor's/Debtor's business therein, and the plans and specifications for the construction or reconstruction thereof.

If the Property is now or hereafter used in whole or in part as a hotel, motel or similar facility or as a restaurant or other food and/or beverage service facility, such personal property shall also include all licenses for the serving of alcoholic beverages at the Property and all lodging and food and/or beverage equipment including, without limitation, beds, bureaus, divans, couches, chinaware, linens, glassware, silverware, uniforms, ornaments, kitchen utensils, bars, bar fixtures, radios, televisions, electric equipment, lamps, mirrors, and other personal property and fixtures used now or hereafter in on or about the operation, use and occupation of a lodging facility and/or food and/or beverage facility, on the Property.

Such security interest shall extend to and include as well as any and all cash and non-cash proceeds, insurance proceeds and condemnation proceeds of such fixtures and personal property and any and all subsequently acquired fixtures and personal property by way of replacement, substitution, addition or otherwise and the proceeds thereof.

Such security interest shall not extend to property owned by third party space tenants now or hereafter occupying the Property.