

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

Sherin and Lodgen LLP  
Attn: Tanya M. Larrabee, Esq.  
101 Federal Street  
Boston, MA 02110

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(Space Above For Recorder's Use)

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

**TRUSTOR: LINKVILLE SOLAR, LLC**, an Oregon limited liability company, whose notice address is 11330 Vanstory Drive, Suite 101, Huntersville, NC 28078, ATTN: Asset Management.

**TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, whose address is 200 SW Market Street, Suite 250, Portland, OR 97201

**BENEFICIARY: 1ST SOURCE BANK**, an Indiana corporation, whose address is, 100 N. Michigan Street, South Bend, Indiana 46601

**NOTICES:**

- a. The maturity date of the loan as provided for in the Loan Agreement (as defined herein) is secured by this Deed of Trust, exclusive of any option to renew or extend the maturity date, is May 14, 2030.
- b. This Deed of Trust secures the loan as provided for in the Loan Agreement (as defined herein) which provides for a variable interest rate.

**NOTICE TO RECORDER:** THIS DEED OF TRUST CONTAINS A FIXTURE FILING AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST/TRUST DEED, BUT ALSO AS A FIXTURE FILING.

The tax account number(s) for the real property subject to this Deed of Trust is/are: 492443 and 534988.

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

**THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this “**Deed of Trust**”) is made and entered into as of the 14<sup>th</sup> day of May, 2024, by and among **LINKVILLE SOLAR, LLC**, an Oregon limited liability company, whose address is 57 Exchange Street, Suite 100, Portland, Maine 04101 (“**Trustor**”); **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, whose address is 200 SW Market Street, Suite 250, Portland, OR 97201, (“**Trustee**”); and **1ST SOURCE BANK**, an Indiana corporation, whose address is 100 N. Michigan St., South Bend, Indiana 46601 (“**Beneficiary**”).

**RECITALS**

A. Trustor has developed an approximately 4.4 MW<sub>DC</sub> solar project (the “**Project**”) on the real property located in the city of Klamath Falls, Klamath County, State of Oregon, as described in **Exhibit A**, in which Trustor has a leasehold interest and estate (the “**Leasehold Estate**”) under the Site Lease (as defined below).

B. Trustor, as borrower, and Beneficiary, as lender, have entered into a Loan Agreement, dated the date hereof (the “**Loan Agreement**”) pursuant to which Beneficiary has agreed to make Trustor a loan (the “**Loan**”) in the amount of **THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00)** to provide permanent financing for the Project.

C. Trustor and Beneficiary have entered into the Security Agreement, dated the date hereof (the “**Security Agreement**”), pursuant to which, among other things, Trustor has granted Beneficiary a security interest in the Collateral, as defined therein.

D. The Obligations secured by this Deed of Trust include repayment of the Loan on the terms and subject to the conditions set forth in the Loan Agreement and the other Loan Documents, as hereafter defined. Interest included in the Obligations secured by this Deed of Trust is payable at the applicable rate provided for in the Loan Agreement, and principal, interest and other amounts and obligations included in the Obligations secured by this Deed of Trust are evidenced by, and are due and payable at the times or on demand, as the case may be, as provided for in, the Loan Agreement.

E. The execution and delivery by Trustor of this Deed of Trust is a condition to the making of the Loan by Beneficiary.

F. All or a portion of the proceeds of the Loan may be advanced to or for the benefit of Trustor, and Trustor acknowledges that it will derive substantial benefit from the Loan.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Trustor, and, by accepting the benefits of this Deed of Trust, Beneficiary, agree as follows:

### **ARTICLE I**

**1.1 Definitions.** Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement. In addition, as used herein, the following terms have the following meanings:

**“Excluded Items”** means, collectively: (i) any guaranty of repayment of the Loan or performance of other obligations under the Loan Documents from a party other than Trustor; and (b) the Environmental Indemnification Agreement which was executed and delivered in connection with the Loan. For the avoidance of doubt, the Excluded Items are not secured by this Deed of Trust.

**“Loan Documents”** means, collectively: (i) the Loan Agreement; (ii) this Deed of Trust; (iii) the Security Documents; and (iv) all other documents evidencing or securing the Loan, provided that inclusion of the Excluded Items in the definition of Loan Documents does not imply that the Excluded Items are secured by this Deed of Trust.

**“Mortgaged Property”** means, all of the, Trustor’s rights and interests, all whether now existing or arising in the future, title and interest, all whether now owned or hereafter acquired, or in which Trustor now or hereafter has an interest, and to, collectively, all of the following: (i) the real property described in **Exhibit A** (the “**Land**”); (ii) all improvements now or at any time situated, placed or constructed on the Land (collectively, the “**Improvements**”; the Land and the Improvements are together referred to as the “**Premises**”); (iii) the leasehold estate under the Site Lease and any additional estate in all or any portion of the Premises; (iv) all goods that are or are to become fixtures related to the Premises, and all other materials, supplies, apparatus now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and all water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (collectively, the “**Fixtures**”); (v) all equipment, other goods, accounts, general intangibles, instruments, documents, chattel paper and other personal property of any kind or character now or hereafter affixed to, placed or located on or in, used in connection with, arising from or otherwise related to the Premises (collectively, the “**Personalty**”); (vi) all reserves, escrows and impounds required under the Loan Agreement and all deposit accounts maintained by Trustor with respect to all or any portion of the property, rights and interests described in this definition (collectively, the “**Deposit Accounts**”); (vii) all leases, licenses, concessions, occupancy agreements and other agreements (written or oral, now or at any time in effect) which grant to any Person (other than Trustor) a possessory interest in, or the right to use, all or any portion of the Premises (collectively, the “**Leases**”); (viii) all rents, revenues, royalties, income, proceeds, profits, security and other types of deposits (subject to applicable depositors’ rights and requirements of law), and other benefits and amounts paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Premises (collectively, the “**Rents**”);

(ix) the Site Lease and all credits, deposits, privileges, rights, estates, title and interest of Trustor as tenant or lessee under the Site Lease; (x) all other leases, licenses, occupancy agreements and concessions relating to the use and enjoyment by Trustor of all or any portion of the Premises and all agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of all or any portion of the Premises (collectively, the “**Property Agreements**”); (xi) all rights, privileges, tenements, hereditaments, rights-of-way, easements and appurtenances appertaining to all or any portion of the Premises; (xii) all property tax refunds payable to Trustor (the “**Tax Refunds**”); (xiii) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the property, rights and interests described above in this definition (collectively, the “**Insurance**”); (xiv) any awards, damages, remunerations, reimbursements, settlements or compensation made or to be made by any Governmental Authority pertaining to all or any portion of the Land, the Improvements, the Fixtures or the Personalty (collectively, the “**Condemnation Awards**”); and (xv) all accessions to, replacements of, substitutions for and proceeds of, any of the property described above in this definition (collectively, the “**Proceeds**”); provided that the Mortgaged Property shall not include, and Trustor shall not be deemed to have granted any lien on or security interest in, any property excluded from the Collateral (as defined in the Security Agreement) pursuant to Section 2.2 of the Security Agreement (“**Excluded Collateral**”).

“**Obligations**” when used with reference to the items secured by this Deed of Trust means the repayment of the amounts owing under the Loan Agreement evidencing the Loan, and performance of all other obligations under the Loan Agreement and other Loan Documents other than the Excluded Items.

“**Site Lease**” means the lease listed or otherwise described in **Exhibit B**, as amended, restated, supplemented or otherwise modified from time to time, and any options to purchase, extend or renew provided for therein.

“**State**” means the State of Oregon.

“**UCC**” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State.

**1.2 Interpretation.** Section 1.2 of the Loan Agreement is incorporated in this Deed of Trust as if set forth herein in full.

## **ARTICLE II GRANTING CLAUSE**

As security for the full and timely payment and performance of the Obligations, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee **IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION AND THE RIGHT TO RECONVEY**, for the benefit and security of Beneficiary, under and subject to the terms and

conditions hereinafter set forth, all of Trustor's right, title and interest in the Site Lease and the other Mortgaged Property.

### **ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1 Title.** Trustor represents and warrants to Beneficiary that (a) Trustor has, and has good right and full power to convey, a valid leasehold estate and interest in the Land and a full ownership of the Improvements, free and clear of all Liens except the Permitted Liens, (b) Trustor has rights in, and the power to transfer rights in, the other Mortgaged Property free and clear of any Liens, claims or interests except the Permitted Liens, and (c) this Deed of Trust creates a valid, enforceable and, subject to the Permitted Liens, first priority lien on and security interest in all of Trustor's estates, rights, title and interests in, to and under the Mortgaged Property.

**3.2 First Lien Status.** Trustor shall preserve and protect the first lien and security interest status of this Deed of Trust. If any Lien other than a Permitted Lien is asserted against all or any portion of the Mortgaged Property, Trustor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such Lien (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause such Lien to be released.

**3.3 Payment and Performance.** Trustor shall promptly pay and perform in full the Obligations to be paid and performed by Trustor as and when required to be paid and performed under the Loan Documents.

**3.4 Replacement of Fixtures and Personalty.** Trustor shall not, without the prior written consent of Beneficiary or except as permitted under the Loan Agreement, remove or permit the removal of any of the Fixtures or the Personalty at any time from the Land or the Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete, and, if necessary for the Project to continue to operate in a commercially reasonable manner, is replaced by an item that is of equal or better suitability and value, owned by Trustor, made subject to the lien and security interest of this Deed of Trust, and free and clear of any other Lien except Permitted Liens.

**3.5 Covenants Running with the Land.** All obligations under this Deed of Trust are intended by Trustor and Beneficiary to be, and shall be construed as, covenants running with the Land. As used herein, "Trustor" shall refer to the party named in the first paragraph of this Deed of Trust its heirs, executors, administrators, successors and assigns. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such Person shall have or be entitled to any rights thereunder without the prior written consent of Beneficiary.

**3.6 Condemnation Awards and Insurance Proceeds.** Trustor assigns all Condemnation Awards to Beneficiary and authorizes Beneficiary to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor, subject to the terms

of the other Loan Documents. Trustor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to all or any portion of the Mortgaged Property, subject to any applicable terms of the other Loan Documents. Trustor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of any of such insurance policies to make payment for all such losses or damages directly to Beneficiary, instead of to Trustor and Beneficiary jointly, subject to any applicable terms of the other Loan Documents. In the case of a partial condemnation or partial loss or damage of the Project, Trustor may retain rights to the Condemnation Awards or insurance proceeds to restore the Project and/or Leasehold Estate in accordance with the Loan Documents.

**3.7 Change in Tax Law.** Upon the enactment of or change in (including a change in interpretation of) any applicable law (a) deducting or allowing Trustor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon or (b) subjecting Beneficiary to any tax or changing the basis of taxation of Deed of Trusts, deeds of trust or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Deed of Trust, the Obligations or Beneficiary, and the result is to increase the taxes imposed upon Beneficiary or the cost to Beneficiary of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder, then, and in any such event, Trustor shall, on demand, pay to Beneficiary additional amounts to compensate for such increased costs or reduced amounts; provided that if any such payment or reimbursement shall be unlawful, or taxable to Beneficiary, or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Trustor shall pay or reimburse Beneficiary for payment of the lawful and non-usurious portion thereof.

**3.8 Insurance.** Trustor shall maintain insurance on the Mortgaged Property in accordance with the requirements of the Loan Agreement.

## **ARTICLE IV DEFAULT AND REMEDIES**

**4.1 Remedies.** If an Event of Default has occurred and is continuing, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Obligations to be due and payable immediately in accordance with the terms of the Loan Agreement.

(b) Receiver. Beneficiary shall, without giving bond to Trustor or anyone claiming by, under or through Trustor, and without regard to whether the value of the Mortgaged Property exceeds the Obligations by a substantial amount, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Mortgaged Property and the Rents, and the proceeds, issues and profits thereof, up to the balance of the Obligations with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver. Such receiver shall have all powers

and duties requested by Beneficiary and available under applicable law, including the power to sell the Mortgaged Property, and all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property, and such legally permissible rights and powers as Beneficiary would have, upon entering and taking possession of the Mortgaged Property under Section 4.1(c) below.

(c) Entry; Possession. Beneficiary may enter into possession of the Mortgaged Property, with or without legal action, and by force if necessary; collect therefrom all Rents, if any (which term shall also include sums payable for use and occupation) and, after deducting all reasonable and documented costs of collection and administration expense, 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 prior encumbrance, taxes, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Mortgaged Property, and on account and in reduction of the principal or interest, or both, secured by this Deed of Trust; in and for that purpose Trustor hereby assigns to Beneficiary all rentals due and to become due under any Lease or Leases or rights to use and occupation of the Mortgaged 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 rentals. The taking of possession and collection of rents by Beneficiary shall not be construed to be an affirmation of any Lease or acceptance of attornment with respect to any Lease of all or any portion of the Mortgaged Property. Beneficiary, in its discretion, may, as attorney in fact or agent of Trustor, or in its own name as Beneficiary and under the powers herein granted, hold, operate, manage and control the Mortgaged 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 avails, rents, issues and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: to cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Trustor to cancel the same; to elect to disaffirm any Lease or sublease which is then subordinate to the lien of this Deed of Trust; to 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 lessees to extend or renew terms to expire, beyond the maturity date of the Obligations 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 Trustor and all persons whose interests in the Mortgaged 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 to enter into any management, leasing or brokerage agreements covering the Mortgaged Property.

(d) Cure: Protection of Security. Beneficiary may cure any breach or default of Trustor under this Deed of Trust, the other Loan Documents and the Leases (but not

the Excluded Items), and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Mortgaged Property and/or do any and all other things which are necessary and appropriate to protect the security of this Deed of Trust or keep the Leases in full force and effect. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's reasonable judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Mortgaged Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Deed of Trust. Beneficiary may take any of the actions permitted under this Section 4.1(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section 4.1(d) shall be secured by this Deed of Trust.

(e) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC. Trustor agrees that the requirement of the UCC with respect to personal property that a secured party give a debtor reasonable notice of any proposed sale or disposition of the collateral shall be met if such notice is given to the Trustor at least ten (10) business days before the time of such sale or disposition.

(f) Foreclosure; Lawsuits. Beneficiary may foreclose this Deed of Trust judicially, in the same manner as a mortgage, or direct the Trustee to exercise its power of sale in accordance with Oregon law, or take such other action at law or in equity for the enforcement of this Deed of Trust and realization on 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 principal debt which is due, with interest at the rate stipulated in the Loan Agreement to the date of default, and thereafter (including, without limitation, from and after the date of any judgment obtained by Beneficiary) at the Default Rate specified in the Loan Agreement, together with all other sums due by Trustor in accordance with the provisions of this Deed of Trust, the Loan Agreement and the other Loan Documents (excluding the Excluded Items), including all sums which may have been loaned by Beneficiary to Trustor after the date of this Deed of Trust under the Loan Agreement, and all sums which may have been advanced by Beneficiary for taxes, payments on prior encumbrances, insurance premiums, utilities or repairs to the Mortgaged Property and other sums which Beneficiary is permitted to advance pursuant to the terms of this Deed of Trust, all costs of suit; including, without limitation, reasonable and documented attorneys' fees, together with interest at such rate on any judgment obtained by Beneficiary from and after the date of any sheriff or other judicial sale until actual payment is made of the full amount due. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent



jurisdiction. In addition, upon or at any time after the filing of a complaint to foreclose this Deed of Trust, Beneficiary shall be entitled to the appointment of a receiver of the Mortgaged Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment.

(g) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof. Beneficiary may release, regardless of consideration, any part of the security held for the indebtedness secured by this Deed of Trust 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.

(h) Procedure for Exercise of Trustee's Power of Sale. Exercise of the power of sale herein contained shall be done in accordance with the provisions of this Deed of Trust and the Deed of Trust Act of the State of Oregon, ORS Ch. 86.705-815, as now existing or hereafter amended. If Beneficiary elects to exercise the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Upon receipt of such statement and notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale and Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, except Trustee, but including, without limitation, Trustor or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. After deducting all costs, fees and expenses of Trustee and of this Trust, including, without limitation, Trustee's fees and reasonable attorneys' fees, and costs of evidence of title in connection with sale, subject to the requirements of ORS 86.704 (or any successor statute thereto) Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms of the Loan Documents, not then repaid, with accrued interest at the Default Rate; (ii) second, all other sums due under the Loan Documents; (iii) all other sums, then secured hereby; and (iv) the remainder, if any, to the person or persons legally entitled thereto. Subject to ORS 86.782(2), Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such

time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale to the extent permitted by applicable law, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(i) Sale of Personal Property. Beneficiary shall have the discretionary right to cause some or all of the Mortgaged Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) For purposes of this power of sale, Beneficiary may elect to treat as personal property any Mortgaged Property, which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property, in any manner permitted by Article 9 of the UCC, including any public or private sale.

(ii) In connection with any sale or other disposition of such Mortgaged Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Trustor not later than thirty (30) days prior to such sale, Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Mortgaged Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its commercially reasonable judgment, none of the offers received by it equals the fair value of the Mortgaged Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(j) Single or Multiple Foreclosure Sales. If the Mortgaged Property consists of more than one lot, parcel or item of property, Beneficiary (or if applicable Trustee) may: (A) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (B) if commercially reasonable, elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner that is commercially reasonable (any such sale or disposition, a “**Foreclosure Sale**”; and any two or more, “**Foreclosure Sales**”). If Beneficiary (or if applicable Trustee) chooses to have more than one Foreclosure Sale, Beneficiary (or if applicable Trustee) may, if commercially reasonable, cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as is commercially reasonable. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Mortgaged Property which has not been sold, until the Final Release.

**4.2 Credit Bids**. At any Foreclosure Sale, any person other than Trustee, including Beneficiary, may bid for and acquire the Mortgaged Property or any part of it to the extent

permitted by then applicable law. Instead of paying cash for the Mortgaged Property, Beneficiary may settle for the purchase price by crediting the sales price of the Mortgaged Property against the Obligations.

**4.3 Application of Foreclosure Sale Proceeds.** Except as otherwise specified in Section 4.1(h), Beneficiary (or if applicable Trustee) shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) *First*, to pay the portion of the Obligations attributable to the reasonable expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary (or if applicable Trustee) under Section 4.6 of this Deed of Trust;

(b) *Second*, to pay the portion of the Obligations attributable to any reasonable sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

(c) *Third*, to pay all other Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) *Fourth*, to remit the remainder, if any, to the person or persons entitled to it.

**4.4 Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 4.1 above, in the following manner:

(a) *First*, to pay the portion of the Obligations attributable to the reasonable costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver (including reasonable and documented attorneys' fees);

(b) *Second*, to pay all other Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) *Third*, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

**4.5 No Waiver or Cure.**

(a) Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Trustor. Consent by Beneficiary to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust

or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Obligations then due have been paid and performed and all other defaults under the Loan Documents, other than the Excluded Items, have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust except as provided by applicable law; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Section 4.1(c).

(ii) Beneficiary collects and applies Rents as permitted under Article V and Section 4.4 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary receives and applies to any Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under the Loan Documents.

(iv) Beneficiary or any receiver invokes any right or remedy provided under this Deed of Trust.

#### **4.6 Compensation, Exculpation, Indemnification.**

(a) Subject to any limits under applicable law, Trustor agrees to pay or reimburse Beneficiary (and if applicable, Trustee) for all reasonable and documented costs and expenses and other advances which may be incurred or made by Beneficiary (and if applicable, Trustee) under the terms of this Trust Deed in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary under this Article IV, whether any lawsuit is filed or not, (including in any probate or bankruptcy proceedings), including reasonable and documented attorneys' fees and other legal costs, costs of any Foreclosure Sale and any cost of evidence of title. If Beneficiary chooses to dispose of the Mortgaged Property through more than one Foreclosure Sale, Trustor shall pay all reasonable and documented costs, expenses or other advances that may be incurred or made by Beneficiary (and if applicable, Trustee) in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Beneficiary under this Deed of Trust or the Loan Documents, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary (and if applicable, Trustee) for reasonable and documented attorneys' costs and fees (including the reasonable and documented costs and fees of paralegals), appraiser's fees, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Beneficiary may deem reasonably necessary either to prosecute such suit or to

evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Mortgaged Property.

(b) Beneficiary (and if applicable, Trustee) shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following, other than as results from Beneficiary's (and if applicable, Trustee's) or their respective representatives' gross negligence or willful misconduct:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Mortgaged Property or under this Deed of Trust prior to Beneficiary taking possession of the Mortgaged Property, if applicable; or

(iii) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Mortgaged Property after using commercially reasonable efforts, or from any other act or omission of Beneficiary in managing the Mortgaged Property, after an Event of Default.

(c) Trustor agrees to indemnify Beneficiary (and if applicable Trustee) against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable and documented attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and reasonable and documented other costs and expenses which it may suffer or incur, other than resulting from Beneficiary (and if applicable Trustee's) or their respective representatives' gross negligence or willful misconduct:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of its obligations;  
or

(iii) Because of any obligation of or undertaking alleged by a third party to be the contractual responsibility of Beneficiary to perform or discharge with respect to any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Mortgaged Property other than the Loan Documents.

This agreement by Trustor to indemnify Beneficiary shall survive for six (6) months following the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section 4.6 immediately upon demand by Deed of Trust. Trustor shall pay expenditures and

expenses of the nature in this Section 4.6 mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Deed of Trust, including the reasonable and documented fees of any attorney (including the reasonable and documented costs and fees of paralegals) employed by Beneficiary (and if applicable, Trustee) in any litigation or proceeding affecting this Deed of Trust or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding arising under this Section 4.6, within ten (10) days after receipt of written demand. Each such obligation shall be added to, and considered to be part of, the principal of the Obligations, and shall bear interest from the date the obligation arises at the Default Rate.

**4.7 Notices.** Notwithstanding anything to the contrary contained herein, the notices specifically required under the Loan Agreement are not waived by any of the provisions in this Deed of Trust.

## **ARTICLE V ASSIGNMENT OF LEASES AND RENTS**

**5.1 Assignment.** Trustor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Beneficiary all of Trustor's right, title and interest in, to and under all Leases, whether now existing or hereafter entered into, and all of Trustor's right, title and interest in and to all Rents. This assignment is intended as additional security for the payment and performance of the Obligations. So long as no Event of Default has occurred and is continuing, Trustor shall have a revocable license from Beneficiary to exercise all rights extended to the landlord or lessor under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise lawfully use the same. If an Event of Default has occurred and is continuing, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Trustor, the license herein granted shall automatically expire and terminate, with notice by Beneficiary. Trustor hereby appoints Beneficiary its attorney in fact to perform any and all of the following acts, if an Event of Default has occurred and is continuing, as reasonably necessary to protect Beneficiary's rights hereunder and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents;
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

**5.2 Perfection Upon Recordation.** Trustor acknowledges that to its knowledge Beneficiary has taken all reasonable actions necessary to obtain, and that upon proper recordation of this Deed of Trust Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents and all security for the Leases subject to the Permitted Liens and, in the case of security deposits, rights of depositors and requirements of law. Trustor acknowledges and agrees that, upon proper

recordation of this Deed of Trust, Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, in accordance with ORS 93.806(2), and enforced as to Trustor and all third parties, including any subsequently appointed trustee in any case under Title 11 of the United States Code, without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action. Beneficiary and Trustor agree that, if an Event of Default has occurred and is continuing, the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive Rents, without first taking any acts of enforcement under applicable law, such as, but not limited to, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Deed of Trustee's and Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Mortgaged Property. In Beneficiary's sole discretion, if an Event of Default has occurred and is continuing, Beneficiary may choose to collect Rents either with or without taking possession of the Mortgaged Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 4.4. If an Event of Default has occurred and is continuing while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

**5.3 Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary or takes title to the Premises, Beneficiary is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property of the use, occupancy, enjoyment or operation of all or any part of it.

## **ARTICLE VI SECURITY AGREEMENT**

**6.1 Security Interest.** This Deed of Trust constitutes a "security agreement" within the meaning of the UCC and other applicable law and with respect to the Fixtures, the Personalty, the Deposit Accounts, the Leases, the Rents, the Property Agreements, the Tax Refunds, the Insurance, the Condemnation Awards and the Proceeds, but excluding any Excluded Items and Excluded Collateral. Subject to any Permitted Liens, Trustor grants to Beneficiary a first and prior security interest in all of Trustor's right, title and interest in, to and

under the Fixtures, the Personalty, the Deposit Accounts, the Leases, the Rents, the Property Agreements, the Tax Refunds, the Insurance, the Condemnation Awards, the Proceeds and all other Mortgaged Property that is personal property (but excluding any Excluded Items and Excluded Collateral) to secure the payment and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to all such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Fixtures, the Personalty, the Deposit Accounts, the Leases, the Rents, the Property Agreements, the Tax Refunds, the Insurance, the Condemnation Awards and the Proceeds sent to Trustor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Trustor.

**6.2     Financing Statement filed as a Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the UCC, covering any Mortgaged Property which now is or later may become fixtures attached to the Premises. This Deed of Trust covers goods that are or are to become fixtures related to the real property included in the Mortgaged Property. This Deed of Trust shall be recorded in the real property records in the county in which the real property included in the Mortgaged Property is located. This Deed of Trust shall be effective, from the date of recording, as a financing statement filed as a fixture filing under the UCC, as to which Trustor is the debtor and Beneficiary is the secured party. The respective names and mailing addresses for the debtor and the secured party are the respective names and addresses for Trustor and Beneficiary as set forth in the preamble of this Deed of Trust. The debtor is an organization, its name is the name of an organization, the type of organization for the debtor is a limited liability company, and the jurisdiction of formation for the debtor is the State of Oregon. The lessor under the Site Lease is the record fee owner of the Land.

**6.3     Financing Statements.** Trustor shall execute one or more financing statements and such other documents as Beneficiary may from time to time reasonably require to perfect or continue the perfection of Beneficiary's security interest in any Mortgaged Property or Rents. Trustor shall pay all reasonable and necessary fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney in fact to execute any such documents on its behalf.

## **ARTICLE VII ATTORNEY-IN-FACT**

Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as Trustor's attorney-in-fact, which appointment is coupled with an interest and with full power of substitution, (a) to execute and/or file or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest in the Mortgaged Property, if Trustor fails to execute and/or file or record any such notices within ten (10) days after written request by Beneficiary, (b) to prepare, execute (if required) and file or record initial financing statements, amendments and continuations of financing statements, applications for registration and like writings or records necessary to perfect or preserve



Beneficiary's security interest and rights in or to any of the Mortgaged Property, and (c) while any Event of Default is continuing, to perform any obligation of Trustor hereunder; provided that (i) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor, (ii) any sums advanced by Beneficiary in connection with any action taken under this Article, if not repaid or reimbursed by Trustor to Beneficiary within ten (10) days after demand by Beneficiary therefor, shall bear interest at the then-applicable Interest Rate from the date that such sum is advanced to and including the date of repayment or reimbursement, and all such sums, plus interest thereon, shall be secured by this Deed of Trust, (iii) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary, and (iv) Beneficiary shall not be liable to Trustor or any other Person for any failure to take any action which Beneficiary is empowered to take under this Article VII.

## **ARTICLE VIII TERMINATION AND RELEASE**

Upon the Final Release, subject to and in accordance with the terms and provisions of the Loan Agreement, Beneficiary, at Trustor's expense, shall direct Trustee to release and reconvey the Lien created by this Deed of Trust in accordance with Section 10.15.

## **ARTICLE IX OTHER COLLATERAL**

Trustor acknowledges that this Deed of Trust is one of the Security Documents that secure the payment and performance of the Obligations. Trustor agrees that, subject to the terms of Article VIII, the Lien of this Deed of Trust shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Beneficiary unless required by law and, without limiting the generality of the foregoing, the Lien hereof shall not be impaired by any acceptance by Beneficiary of any other security for or guarantees of the Obligations, or by any failure, neglect or omission on the part of Beneficiary to realize upon or protect any Collateral or other security or support for any of the Obligations, including under any other Security Documents. Subject to the terms of Article VIII, the Lien of this Deed of Trust shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition, as applicable, of any of the Obligations, the other Security Documents, the Collateral or any other security or support for any of the Obligations and, to the fullest extent permitted by applicable law, Beneficiary may, in its sole discretion, exercise any right, remedy or recourse available to Beneficiary under any or all of the other Security Documents without first exercising or enforcing any of Beneficiary's rights and remedies under this Deed of Trust. Any exercise of Beneficiary's rights and remedies under any or all of the other Security Documents shall not in any manner impair the Obligations secured by this Deed of Trust or the Lien of this Deed of Trust, and any exercise of the rights and remedies of Beneficiary under this Deed of Trust shall not impair the Lien of any of the other Security Documents or any of Beneficiary's rights and remedies thereunder. To the fullest extent

permitted by applicable law, Trustor specifically consents and agrees that Beneficiary may exercise its rights and remedies hereunder and under the other Security Documents separately or concurrently and in any order that Beneficiary may deem appropriate.

## **ARTICLE X MISCELLANEOUS**

**10.1 Notices.** Any notices, communications, and waivers under this Agreement shall be in writing and given in a manner provided for in Section 9.14 of the Loan Agreement and, if to Beneficiary, to the address for Lender provided for in that Section and, if to Trustor, to the address for Trustor set forth in the preamble of this Deed of Trust or at such other address as Trustor shall designate in a written notice to Beneficiary given in the manner provided for in this Section.

**10.2 Governing Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THAT THE VALIDITY, PERFECTION OR PRIORITY OF THE SECURITY INTEREST CREATED UNDER THIS DEED OF TRUST, OR REMEDIES UNDER THIS DEED OF TRUST, IN RESPECT OF ANY PARTICULAR COLLATERAL (INCLUDING RIGHTS TO A DEFICIENCY AFTER JUDICIAL OR NONJUDICIAL FORECLOSURE) ARE GOVERNED BY THE LAWS OF THE STATE OF OREGON, IN WHICH CASE THE LAWS OF THE STATE OF OREGON SHALL GOVERN.

**10.3 Severability.** If any one or more provisions of this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any jurisdiction, the other provisions of this Deed of Trust shall not, in any way, be thereby affected or impaired and Trustor shall cooperate with Beneficiary to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of replaced provisions. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant.

**10.4 WAIVER OF JURY TRIAL.** ALL PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**10.5 Successors and Assigns.** This Deed of Trust binds and inures to the benefit of Beneficiary and Trustor and Trustee and their respective successors and assigns. Trustor shall not assign, delegate or transfer any of its rights or obligations hereunder without the prior written consent of Trustor.

**10.6 Subrogation.** If and to the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness secured by all or any portion of the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, liens and interests held by the holder of such indebtedness with respect to the Mortgaged Property, and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

**10.7 Entire Agreement; Amendments.** This Deed of Trust, the other Loan Documents and the other documents and agreements referred to herein and therein constitute the entire understanding and agreement between Trustor and Beneficiary with respect to the subject matter hereof, and supersede all prior agreements, express or implied, oral or written, between Trustor and Beneficiary with respect to the subject matter hereof. This Deed of Trust may be amended or otherwise modified only by a writing signed by Trustor and Beneficiary. No requirement of this Deed of Trust may be waived at any time except in a writing signed by Beneficiary, and any such waiver shall be effective only as to its terms in the specific instance and for the specific purpose for which given.

**10.8 Site Lease; No Merger of Estates.** If Trustor acquires the fee or any other interest in all or any portion of the Land or the Improvements originally subject to the Site Lease, then that acquired interest immediately shall become subject to the Lien of this Deed of Trust as fully and completely, and with the same effect, as if Trustor now owned that interest and as if this Deed of Trust specifically described that interest, without need for the delivery or recording of a supplement to this Deed of Trust or any other document or instrument. In the event of any such acquisition by Trustor, the fee and leasehold interests in such Land or Improvements shall remain separate and distinct and shall not merge, notwithstanding any doctrine of merger or any other principle of law to the contrary, unless Beneficiary elects otherwise in writing. No merger shall occur as a result of Beneficiary acquiring any other estate in or any other lien on the Mortgaged Property unless Beneficiary consents to a merger in writing.

**10.9 Appointment of Successor Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Mortgaged Property is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

**10.10 Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, Trustee may (a) reconvey any part of the Mortgaged Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**10.11 Beneficiary's Powers.** Without affecting the liability of any Person liable for the payment or performance of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Mortgaged Property not then or theretofore

released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**10.12 Change, Discharge, Termination, or Waiver.** No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

**10.13 Trustor – Surety Waiver of Rights.** Trustor waives, to the extent not otherwise prohibited by applicable law, (i) the benefit of all present and future laws providing for any appraisal before sale of any portion of the Mortgaged Property, (ii) all rights of redemption, valuation, stay of execution, notice of election to mature or declare due the Obligations, and marshaling in the event of foreclosure of this Deed of Trust as a Deed of Trust or exercise of the power of sale herein, and (iii) to the extent Trustor is a surety or this Deed of Trust otherwise constitutes a guaranty of any kind, all rights and remedies that Trustor may have or be able to assert as a surety or guarantor by reason of the laws of the State of Oregon pertaining to the rights and remedies of sureties. Trustor agrees that Beneficiary may designate the portion of the Obligations that is satisfied by any partial payment pursuant to the Loan Documents.

**10.14 Statements by Trustor.** Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

**10.15 Reconveyance by Trustee.** In addition to any partial reconveyances to be provided in accordance with any provision in the other Loan Documents, upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

**10.16 Intentionally deleted.**

**10.17 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**10.18 Captions and References.** The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless

otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

**10.19 Invalidity of Certain Provisions.** If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

**10.20 Time of the Essence.** Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

**10.21 Not a Residential Trust Deed.** This Deed of Trust is a commercial trust deed and not a residential trust deed, as the phrase "residential trust deed" is defined in ORS 86.705(6), or any successor statute thereto, and the provisions of ORS 86.705 through 86.815 applicable to the foreclosure of commercial trust deeds, and as may be amended from time to time, shall apply to this Deed of Trust at the option of Beneficiary. Trustor warrants that the obligations secured hereby are for commercial purposes and are not for personal, family or household use.

**10.22 FORCE-PLACED INSURANCE WARNING.**

**A. UNLESS TRUSTOR PROVIDES BENEFICIARY WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THIS AGREEMENT, BENEFICIARY MAY PURCHASE INSURANCE AT TRUSTOR'S EXPENSE TO PROTECT BENEFICIARY'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT TRUSTOR'S INTEREST. IF THE COLLATERAL FOR THE LOAN SECURED HEREBY BECOMES DAMAGED, THE COVERAGE BENEFICIARY PURCHASES MAY NOT PAY ANY CLAIM TRUSTOR MAKES OR ANY CLAIM MADE AGAINST TRUSTOR. TRUSTOR MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT TRUSTOR HAS OBTAINED PROPERTY COVERAGE ELSEWHERE.**

**B. TRUSTOR IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY BENEFICIARY. THE COST OF THIS INSURANCE MAY BE ADDED TO TRUSTOR'S LOAN BALANCE. IF THE COST IS ADDED TO TRUSTOR'S LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE TRUSTOR'S PRIOR COVERAGE LAPSED OR THE DATE TRUSTOR FAILED TO PROVIDE PROOF OF COVERAGE.**

**C. THE COVERAGE BENEFICIARY PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE TRUSTOR CAN OBTAIN**

**ON TRUSTOR'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.**

**10.23 ORS 93.040 Disclosure. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

**10.24 Oregon Statute of Frauds Notice. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE**

**[Signature Page Follows]**

[Signature Page to Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing]

EXHIBIT "A"

LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of Klamath, State of Oregon, and is described as follows:

PARCEL I (LEASEHOLD AREA):

LAND LOCATED IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 39 SOUTH, RANGE 9 EAST, AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 39 SOUTH, RANGE 8 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY 1/4 CORNER OF SECTION 6;

THENCE NORTH 44°46'27" EAST 35.34 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON A LINE 25 FEET EASTERLY AND PARALLEL TO THE WESTERLY BOUNDARY OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6;

THENCE ALONG SAID LINE NORTH 0°15'02" WEST 1012.22 FEET;

THENCE LEAVING SAID LINE SOUTH 62°16'03" EAST 1488.12 FEET TO A POINT ON A LINE BEING 25 FEET WESTERLY AND PARALLEL TO THE EASTERLY BOUNDARY OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6;

THENCE ALONG SAID LINE SOUTH 0°59'38" WEST 315.18 FEET TO A POINT, SAID POINT BEING AT THE INTERSECTION OF SAID LINE AND A LINE 25 FEET NORTHERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6;

THENCE ALONG SAID NORTHERLY OFFSET LINE SOUTH 89°47'56" WEST 1307.29 FEET TO THE POINT OF BEGINNING.



PARCEL II (UTILITY AND ACCESS EASEMENT AREA):

PARCEL 1:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER LYING NORTHEASTERLY OF HIGHWAY 140 OF SECTION 1, TOWNSHIP 39 SOUTH, RANGE 8 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON. LESS AND EXCEPT THAT PORTION DEEDED TO SOUTHVIEW MASTER ASSOCIATION, BY WARRANTY DEED RECORDED AUGUST 6, 2004 IN VOLUME M04 PAGE 51781, RECORDS OF KLAMATH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

ALL PRIVATE WAYS, TOGETHER WITH SUCH COMMON USE IMPROVEMENTS AS MAY BE LOCATED WITHIN SAID PRIVATE WAYS AS PROVIDED FOR AND SET FORTH ON THAT CERTAIN SUBDIVISION PLAT COMMONLY REFERRED TO AS TRACT 1416 - THE WOODLANDS PHASE 1 LOCATED WITHIN THE CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON INCLUDING BUT NOT LIMITED TO STREETS AND ROADS; SANITARY SEWER CONVEYANCE SYSTEMS; STORMWATER CONVEYANCE SYSTEMS; STORMWATER DRAINAGE WAYS; STREET LIGHTING SYSTEMS; COMMON AREA SIDEWALKS AND COMMON AREAS.

PARCEL 2:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

EXHIBIT "B"

SITE LEASE DESCRIPTION

Ground Lease Agreement dated June 19, 2020 with certain terms, covenants, conditions and provisions set forth therein, between Mountain and Lake View Properties LLC, an Oregon limited liability company, as Lessor, and Linkville Solar, LLC, an Oregon limited liability company, as Lessee as disclosed by that certain Memorandum of Ground Lease dated August 19, 2019, recorded October 20, 2021 in the Official Records of Klamath County, Oregon, Instrument Number: 2021-015805.