

When recorded return to:  
UNION BANK  
Attn: CRELA  
145 South State College Blvd., Suite #600  
Mail Code: 4-35A-379  
Brea, CA 92821



201203130063  
Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY  
127843-0

### MODIFICATION AGREEMENT (Short Form)

Reference # : 2779104087-1

Grantor(s): Fidalgo Storage LLC, a Washington limited liability company

Grantee(s): Union Bank, N.A., successor in interest to the FDIC, as Receiver of Frontier Bank  
Land Title Company, Trustee

Abbreviated Legal: A PTN OF NW ¼ SW ¼ OF Section 3, Township 34 North, Range 2 East, W.M.  
APN: 4990-006-999-0000 (Property I.D. No. P129913). . Additional APN on Exhibit A.

### RECITALS

The undersigned agree that the following documents: (i) that certain promissory note dated January 23, 2008 in the stated principal amount of Five Million Five Hundred Thirty Thousand and no/100 Dollars (\$5,530,000.00) (the "Original Note"), executed by Fidalgo Storage LLC, a Washington limited liability company, as Borrower, (ii) that certain construction deed of trust securing the same executed by Fidalgo Storage LLC, a Washington limited liability company, as Grantor, recorded on February 11, 2008 under Skagit County Auditor's Number 200802110154 (the "Deed of Trust"), be and are amended upon the terms and conditions set forth in that certain Modification Agreement (Long Form) and Amended and Restated Commercial Promissory Note Secured by Deed of Trust between the undersigned dated February 17, 2012. The Modification Agreement (Long form) and Amended and Restated Commercial Promissory Note Secured by Deed of Trust are by this reference incorporated herein and made a part hereof. The Deed of Trust affects that certain real property located in Skagit County, State of Washington described below.

### MODIFICATION OF DEED OF TRUST

THIS MODIFICATION AGREEMENT (SHORT FORM) ("Modification"), made this 17th day of February, between Fidalgo Storage, LLC, a Washington limited liability company, as GRANTOR(S), whose address is 2527 177<sup>TH</sup> Street SE, Bothell, WA 98012 (the "Grantor"), and Union Bank, N.A., as successor in interest to the FDIC, as Receiver of Frontier Bank, ("Lender" or "Beneficiary") whose address is 1980 Saturn Street, Monterey Park, CA 91755, and Land Title Company, as TRUSTEE (the "Trustee"), whose address is 111 East George Hopper Road, Burlington, Washington 98233.

**DEED OF TRUST.** Lender and Grantor have entered into a Construction Deed of Trust dated January 23, 2008 which has been recorded in Skagit County, State of Washington, as follows:

**RECORDED ON FEBRUARY 11, 2008, BY LAND TITLE COMPANY OF SKAGIT COUNTY, STATE OF WASHINGTON UNDER AUDITOR'S FILE NO. 200802110154.**

**REAL PROPERTY DESCRIPTION.** The Deed of Trust covers the following described real property located in Skagit County, State of Washington:

PARCEL "A"

The West 297 feet of the Northwest ¼ of the Northwest ¼ of the Southwest ¼ of Section 3, Township 34 North, Range 2 East, W.M., lying South of State Highway No. 1, as conveyed to the State of Washington by Deed recorded January 12, 1961, under Auditor's File No. 60301.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "B"

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al recorded August 16, 1994, under Auditor's File No. 9408160065 and delineated on the face of Skagit Sound Business Park Condominium recorded May 3, 2007, under Auditor's File No. 200705030118, records of Skagit County.

Situate in the City of Anacortes, County of Skagit, State of Washington.

EXCEPT those portions of real property described as:

Units 101, 102, 103, 109 and 111, all within Building 1, of said "Fidalgo Business Park Condominium";

AND EXCEPT Units 113, 114, 115, 116, 120, 121, 122, 131 and 132, Building 3, of said "Fidalgo Business Park Condominium";

Situate within the County of Skagit, State of Washington.

**NOW KNOWN AS:**

**PARCEL "A"**

All "Fidalgo Business Park Condominium", according to Declaration recorded October 8, 2009 under Auditor's File No. 200910080142 and Survey Map and Plans recorded under Auditor's File No. 200910080141, all records of Skagit County, State of Washington;

EXCEPT those portions of real property described as:

Units 101, 102, 103, 109 and 111, all within Building 1, of said "Fidalgo Business Park Condominium";

\*110

AND EXCEPT Units 113, 114, 115, 116, 120, 121, 122, 131 and 132, Building 3, of said "Fidalgo Business Park Condominium";

Situate within the County of Skagit, State of Washington.



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**PARCEL "B"**

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al, recorded August 16, 1994, under Auditor's File No. 9408160065 and delineated on the face of "Skagit Business Park Condominium", recorded May 3, 2007, under Auditor's File No. 200705030118, AND "Fidalgo Business Park Condominium", recorded October 8, 2009, under Auditor's File No. 200910080141; All records of Skagit County, State of Washington;

Situate within the County of Skagit, State of Washington.

The Real Property or its address is commonly known as 9008-9012 Molly Lane, Anacortes, WA 98221. The Real Property tax identification number previously known as 340203-3-008-0001 is now known as 4990-006-999-0000; Property I.D. NO.: P129913; See Exhibit A for balance of identification numbers.

**MODIFICATION.** Lender and Grantor hereby modify the Deed of Trust as follows:

**That certain Construction Deed of Trust dated January 23, 2008 recorded on February 11, 2008 under Auditor's File No. 200802110154 is hereby modified, replaced and superseded in its entirety in the form attached hereto as Exhibit B, to become effective upon the recording of this Modification.**

**CONTINUING VALIDITY.** The terms of the Deed of Trust attached hereto as Exhibit B modify, replace and supersede the terms of the Deed of Trust recorded under Auditor's File No. 200802110154 in their entirety. Consent by Lender to this Modification does not waive Lender's right to require strict performance of the Deed of Trust as changed above nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Deed of Trust (the "Note"). It is the intention of Lender to retain as liable all parties to the Deed of Trust and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification. If any person who signed the original Deed of Trust does not sign this Modification, then all persons signing below acknowledge that this Modification is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Modification or otherwise will not be released by it. This waiver applies not only to any initial extension of modification, but also to all such subsequent actions.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION AGREEMENT (SHORT FORM) DATED FEBRUARY 17, 2012 AND GRANTOR AGREES TO ITS TERMS.**

**GRANTOR:**

**Fidalgo Storage LLC,  
a Washington limited liability company**

**By: Howe Anacortes LLC, a Washington limited liability company,  
Manager/Member**

**By:**   
**Name:** Robert D. Howe  
**Title:** Manager/Member



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By: **Matson Real Estate LLC, a Washington limited liability company,**  
**Member**

By: *Robert L. Matson, Jr.*

Name: **Robert L. Matson, Jr.**

Title: **Member**

By: *Melodee Matson*

Name: **Melodee Matson**

Title: **Member**

**GRANTEE:**

**Union Bank, N.A., successor in interest to the FDIC,  
as Receiver of Frontier Bank**

By: *Cynthia Rafael*

Name: **Cynthia Rafael**

Title: **Vice President**



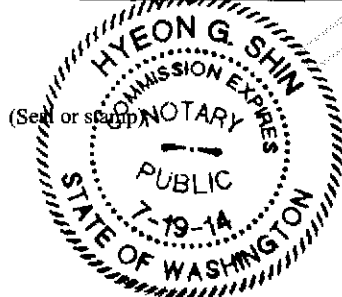
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Skagit County Auditor

STATE OF WASHINGTON )

COUNTY OF Snohomish )

I certify that I know or have satisfactory evidence that Robert D. Howe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager/Member of Howe Anacortes LLC which is the Manager/Member of Fidalgo Storage, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/16/2012



[Signature]

(Signature)  
Hyeon Shin  
(Name legibly printed or stamped)

Notary Public in and for the State of Washington  
residing at Mill Creek

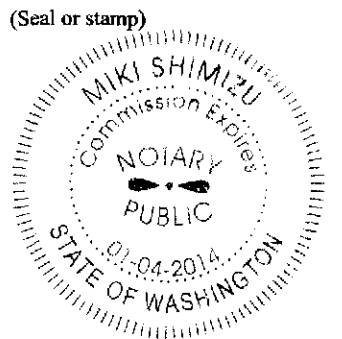
My appointment expires 11/19/2014

STATE OF WASHINGTON )

COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert L. Matson, Jr. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Member of Matson Real Estate LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 03/07/2012



[Signature]

(Signature)  
Miki Shimizu  
(Name legibly printed or stamped)

Notary Public in and for the State of Washington  
residing at King County

My appointment expires 01-04-2014



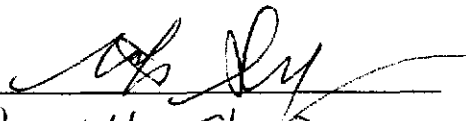
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STATE OF WASHINGTON )

COUNTY OF KING )

I certify that I know or have satisfactory evidence that Melodee Matson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as Member of Matson Real Estate LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 03-07-2012



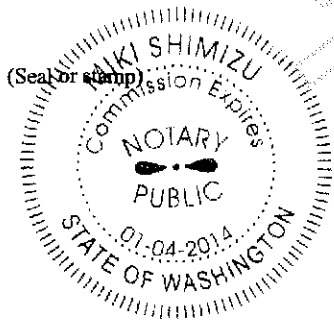
(Signature)

Miki Shimizu

(Name legibly printed or stamped)

Notary Public in and for the State of Washington  
residing at King County

My appointment expires 01-04-2014



UNOFFICIAL DOCUMENT



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**CALIFORNIA NOTARY ACKNOWLEDGMENT FORM**

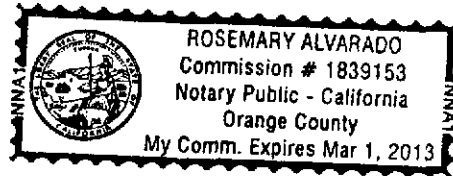
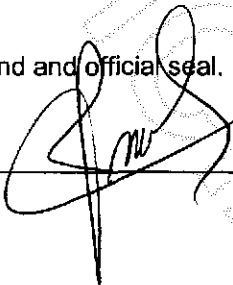
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE )

On March 12, 2012 before me Rosemary Alvarado, a Notary Public, personally appeared Cynthia Rafael, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

**WITNESS** my hand and official seal.

Signature \_\_\_\_\_ (SEAL)



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**EXHIBIT A  
TO  
MODIFICATION AGREEMENT (SHORT FORM)**

<u>Account Number</u>	<u>Account Number</u>	<u>Account Number</u>
4990-006-999-0000 Property I.D. No.: P129913	4990-003-106-0000 Property I.D. No.: P129884	4990-003-126-0000 Property I.D. No.: P129904
4990-001-104-0000 Property I.D. No.: P129870	4990-003-107-0000 Property I.D. No.: P129885	4990-003-127-0000 Property I.D. No.: P129905
4990-001-105-0000 Property I.D. No.: P129871	4990-003-108-0000 Property I.D. No.: P129886	4990-003-128-0000 Property I.D. No.: P129906
4990-001-106-0000 Property I.D. No.: P129872	4990-003-109-0000 Property I.D. No.: P129887	4990-003-129-0000 Property I.D. No.: P129907
4990-001-107-0000 Property I.D. No.: P129873	<del>4990-003-110-0000</del> <del>Property I.D. No.: P129888</del>	4990-003-130-0000 Property I.D. No.: P129908
4990-001-108-0000 Property I.D. No.: P129874	4990-003-111-0000 Property I.D. No.: P129889	4990-004-000-0000 Property I.D. No.: P129911
4990-001-110-0000 Property I.D. No.: P129876	4990-003-112-0000 Property I.D. No.: P129890	4990-005-000-0000 Property I.D. No.: P129912
4990-002-000-0000 Property I.D. No.: P129878	4990-003-117-0000 Property I.D. No.: P129895	
4990-003-101-0000 Property I.D. No.: P129879	4990-003-118-0000 Property I.D. No.: P129896	
4990-003-102-0000 Property I.D. No.: P129880	4990-003-119-0000 Property I.D. No.: P129897	
4990-003-103-0000 Property I.D. No.: P129881	4990-003-123-0000 Property I.D. No.: P129901	
4990-003-104-0000 Property I.D. No.: P129882	4990-003-124-0000 Property I.D. No.: P129902	
4990-003-105-0000 Property I.D. No.: P129883	4990-003-125-0000 Property I.D. No.: P129903	



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"EXHIBIT B"

When recorded return to:

UNION BANK  
Attn: CRELA  
145 South State College Blvd., Suite #600  
Mail Code: 4-35A-379  
Brea, CA 92821

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

Reference #: 2779104087-1  
Grantor(s): Fidalgo Storage LLC, a Washington limited liability company  
Grantee(s): Union Bank, N.A., successor in interest to the FDIC, as Receiver of  
Frontier Bank  
Land Title Company, Trustee  
Legal Description: PTN "Fidalgo Business Park Condominium". Additional Legal(s) on  
Exhibit A  
Assessor's Tax Parcel ID: 4990-006-999-0000 (Property I.D. No. P129913). Additional APN on  
Exhibit A

**THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (the "Deed of Trust") is made as of the 17<sup>th</sup> day of February, 2012 by FIDALGO Storage LLC, a Washington Limited Liability Company, as Grantor ("Grantor" or "Obligor"), whose mailing address is 2527 177<sup>th</sup> St. SE, Bothell, WA 98012, in favor of Land Title Company, as Trustee ("Trustee"), whose mailing address is 111 East George Hopper Road, Burlington, WA 98233 for the benefit of UNION BANK, N.A., successor in interest to the FDIC, as Receiver of Frontier Bank, as Beneficiary ("Beneficiary" or "Lender"), whose mailing address is 1980 Saturn Street, Monterey Park, CA 91755.

This Deed of Trust amends, restates, replaces and supersedes in its entirety that Construction Deed of Trust dated January 23, 2008 executed by the Grantor and recorded on February 11, 2008 in Skagit County records under recording number 200802110154.

1. **GRANT IN TRUST.** For the purpose of securing payment and performance of the Secured Obligations (as defined in the "SECURED OBLIGATIONS" Section below), Grantor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, its successors and assigns, **IN TRUST, WITH POWER OF SALE TOGETHER WITH THE RIGHT OF ENTRY AND POSSESSION**, for the benefit and security of Beneficiary, all present and future rights, titles, interests, estates, powers and privileges that Grantor now has or may hereafter acquire in or to the following described property and any interest therein (collectively, the "Trust Estate"):

Deed of Trust Rev (03/14/07) 7-20-09  
CRELA Version

-1-



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1.1 The real property located in the County of Skagit, State of Washington, more particularly described in Exhibit "A" attached hereto (the "Real Property"); which real property is not used principally for agricultural or farming purposes;

1.2 All buildings and other improvements and structures now or hereafter located on the Real Property (collectively, the "Improvements" and together with the Real Property shall sometimes be referred to as the "Property");

1.3 All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a "Lease", and collectively, the "Leases");

1.4 All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property, including, without limitation, cash or security deposited under any of the Leases to secure the performance by the lessees of their obligations thereunder (collectively, the "Rents");

1.5 All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or any interest therein (and any greater estate in the Property now owned or hereafter acquired by Grantor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property, including, without limitation, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights, oil, gas or other mineral rights and all royalty, leasehold and other rights of Grantor pertaining thereto;

1.6 All water and water rights pertaining to the Real Property, and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by Grantor with respect to the Property;

1.7 All policies of insurance and all claims, demands or proceeds relating to such insurance or condemnation awards, recoveries or settlements which Grantor now has or may hereafter acquire with respect to the Property, including all advance payments of insurance premiums made by Grantor with respect thereto;

1.8 All inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other articles of personal property, which are now or hereafter owned by Grantor and located at, placed upon or about, or affixed or attached to or installed in or on the Property or any part thereof, and used or to be used in connection with or otherwise relating to the Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy thereof, and all accessories, attachments, parts, or repairs of or to any of such property;

1.9 All (a) accounts, general intangibles, chattel paper, letter of credit rights, deposit accounts, money, investment property, documents, certificates of title and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate, (b) refunds, rebates, reserves, deferred payments, deposits, cost savings and payments of any kind due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (individually, a "Governmental Agency"), or (ii) any insurance or utility company, in either case relating to any or all of the Trust Estate, (c) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-



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governmental charges or levies imposed upon Grantor with respect to or upon any or all of the Trust Estate, (d) cash collateral accounts maintained pursuant to any of the Loan Documents (as defined in the "Inspections" Section below), and (e) any amounts owing from Beneficiary to Grantor under any interest rate swap or similar agreement heretofore or hereafter entered into between Grantor and Beneficiary; and

1.10 All supporting obligations for, additions, accessions, improvements and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing.

2. **SECURED OBLIGATIONS.** Grantor makes the grant, conveyance, transfer and assignment set forth in the "GRANT IN TRUST" Section above FOR THE PURPOSE OF SECURING the following obligations (collectively, the "Secured Obligations") in such order of priority as Beneficiary may elect:

2.1 Payment of all sums at any time owing and the performance of all other obligations arising under that certain promissory note in the original principal amount of Five Million Five Hundred Thirty Thousand and no/100 Dollars (\$ 5,530,000.00) dated January 23, 2008 executed by Fidalgo Storage LLC, a Washington limited liability company ("Obligor") to the order or in favor of Beneficiary, and any and all modifications, replacements, extensions and renewals thereof specifically including the Amended and Restated Commercial Promissory Note Secured by Deed of Trust (collectively, the "Debt Instrument"), whether hereafter evidenced by the Debt Instrument or otherwise;

2.2 Payment of interest on such sums according to the terms of the Debt Instrument;

2.3 Payment of all other sums, including late charges and any attorneys' fees and other advances made by Beneficiary hereunder as hereinafter provided, with interest thereon as hereinafter provided, which are due or payable to Trustee or Beneficiary under the provisions hereof;

2.4 *Due, prompt and complete observance, performance and discharge* of each and every obligation, covenant and agreement of Grantor contained herein, of Obligor in the Debt Instrument or in the Modification Agreement (Long Form), if any, executed by Grantor or Obligor, as the case may be, in connection with the indebtedness evidenced by the Debt Instrument, and all supplements, amendments and modifications thereto and all extensions and renewals thereof, or in any other instrument or document heretofore or hereafter executed by Grantor or Obligor having reference to or arising out of the indebtedness evidenced by the Debt Instrument which recites that the obligations thereunder are secured hereby;

2.5 Payment of such additional sums as may be hereafter borrowed from Beneficiary by Grantor or Obligor (or guaranteed by Grantor) when evidenced by a Debt Instrument or instruments (or guaranty or guaranties, as the case may be) which are by the terms thereof (or by the terms of any other instrument executed by Grantor or Obligor, as the case may be, in connection therewith) secured by this Deed of Trust, together with interest and late charges thereon according to the terms of such Debt Instrument or instruments;

2.6 The obligations of Grantor or Obligor under any interest rate swap or similar agreement heretofore or hereafter entered into between Grantor and Beneficiary with respect to all or any part of the indebtedness now or hereafter secured hereby that is evidenced by one or more promissory notes, and any and all amendments and modifications, replacements, extensions and renewals thereof; and

2.7 Performance of such future obligations which Grantor or Obligor may agree to perform for the benefit of Beneficiary when Grantor or Obligor executes a document or documents reciting that such obligations are secured hereby.



**3. AFFIRMATIVE COVENANTS OF GRANTOR.** Grantor hereby agrees as follows:

**3.1 Performance of Obligations.** To pay, perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Deed of Trust has been given as security as provided above.

**3.2 Maintenance, Repair and Alterations.** To keep the Trust Estate in good condition and repair; not to remove, demolish or substantially alter any of the Improvements without the prior written consent of Beneficiary; to notify Beneficiary in writing of any material damage or destruction to the Trust Estate or any portion thereof immediately upon Grantor obtaining knowledge of same, whether or not covered by insurance; to complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Real Property and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions (including, without limitation, the directives of any Governmental Agency) now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations, improvements or additions to be made thereon; not to commit or permit any waste or deterioration of the Trust Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to perform, in the event all or any portion of the Trust Estate constitutes a leasehold estate, each and every obligation of Grantor under the terms of the agreements creating such leasehold estate shall not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of any law, ordinance or regulation.

**3.3 Insurance**

(a) **Coverage.** To keep Improvements insured at all times against loss or damage with property hazard insurance in an amount at least equal to the full insurable value of the Improvements (including tenant improvements) on a replacement cost basis, as determined by Beneficiary (as such insurable value may change from time to time) and against any other risk or hazard which in the opinion of Beneficiary should be insured against including, without limitation, earthquake, flood and business interruption (including rent loss and/or extra expense or as appropriate). Grantor shall also carry public liability insurance with coverage amounts as determined by Beneficiary (as such coverage amounts may change from time to time). All insurance policies shall (i) be in such form and with such endorsements as may be required by Beneficiary, (ii) provide a lender's loss payable endorsement or be endorsed with a standard non-contributory mortgage clause, as appropriate, in favor of Beneficiary, (iii) be underwritten by insurance providers acceptable to Beneficiary, and (iv) provide Beneficiary at least thirty (30) days prior notice of cancellation, non-renewal or modification. The policy or policies evidencing all insurance required hereunder (or certificates of such insurance) shall be delivered to and held by Beneficiary. Grantor shall pay premiums on such insurance as they become due, and shall not permit any condition to exist on or with respect to the Property which would wholly or partially invalidate any insurance.

(b) **Application of Proceeds.** To pay to Beneficiary, promptly upon Grantor's receipt of same, any proceeds received by Grantor under any such insurance policy on account of any damage or destruction to the Improvements. Beneficiary shall have the right to join Grantor in adjusting any loss covered by any such insurance, and all loss under all such insurance shall be payable directly to Beneficiary, and Grantor hereby authorizes and empowers Beneficiary, at Beneficiary's sole option and in Beneficiary's sole discretion as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection thereof. If Beneficiary elects not to exercise such right, Beneficiary shall be under no obligation to question the amount of any compensation, award, recovery, settlement, proceeds, damages, claims, rights



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of action or payments received under any policy of insurance on account of any damage or destruction to the Improvements, and may accept the same in the amount paid. In the event of any damage to or destruction of the Improvements, Beneficiary shall have the option, in its sole discretion, to: (i) apply, in the event Beneficiary determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such damage or destruction, all or any part of such proceeds to any indebtedness secured hereby in such order as Beneficiary may determine, whether or not such indebtedness is then due, (ii) release all or any part of such proceeds to Grantor, or (iii) hold the balance of such proceeds to be used to reimburse Grantor for the cost of reconstruction of the Improvements. In the event Beneficiary elects to so hold such insurance proceeds, the Improvements shall be promptly and diligently restored by Grantor to the equivalent of their condition immediately prior to such damage, destruction or casualty or to such other condition as Beneficiary may approve in writing, and the disbursement of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Beneficiary. If Beneficiary elects to apply the insurance proceeds to the payment of the sums secured hereby, and after doing so Beneficiary reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Grantor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. Moreover, such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**3.4 Taxes.** To (a) pay (unless Beneficiary impounds funds for payment of same, in which event Beneficiary shall pay) prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and charges of any kind or nature whatsoever, which are imposed upon, assessed against or affect the Trust Estate or any part thereof, (b) pay when due all encumbrances, charges or liens of any kind or nature whatsoever, which create or may create a lien upon the Trust Estate or any part thereof or any interest therein, whether prior and superior or subject and subordinate to the lien hereof, and (c) deliver, upon Beneficiary's request, to Beneficiary, within ten (10) days after the date upon which any such tax, assessment, encumbrance, charge or lien is due and payable by Grantor, official receipts of the appropriate taxing authority (or other proof satisfactory to Beneficiary) evidencing the payment thereof.

**3.5 Condemnation.** Grantor, upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, shall immediately notify Beneficiary of such fact in writing. Beneficiary shall have the right, but not the obligation, to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Grantor's expense, and Grantor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Grantor may become entitled to on account of such proceedings shall be paid to Beneficiary. Any sums so collected by Beneficiary shall first be applied to reimburse Trustee and Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such sums, and the balance shall be applied, in the event Beneficiary determines that the security for the repayment of the indebtedness secured hereby has been impaired on account of such condemnation, to any indebtedness secured hereby in such order as Beneficiary may determine, whether or not such indebtedness is then due. Any surplus remaining after payment and satisfaction of any indebtedness secured hereby shall be paid to Grantor as its interest may then appear. If Beneficiary elects to apply the condemnation proceeds to the payment of the sums secured hereby, and after doing so Beneficiary reasonably determines that the remaining security is inadequate to secure the remaining indebtedness, Grantor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall be under no obligation to question the amount of any compensation, awards, recoveries, settlement, proceeds, damages, claims,



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rights of action or payments received in any such condemnation proceeding, and may accept the same in the amount paid.

**3.6 CC&Rs.** To promptly and completely observe, perform and discharge each and every condition, obligation, covenant and agreement affecting the Property, whether the same is prior and superior or subject and subordinate hereto, including, without limitation, if the Property is or will be a condominium, community apartment or part of a planned development project, each and every provision to be performed by Grantor under any declaration of covenants, conditions and restrictions or the like pertaining thereto.

**3.7 Actions Affecting Trust Estate.** To appear in and defend, at Grantor's expense, any action or proceeding purporting to affect the Trust Estate, the security hereof or the rights or powers of Beneficiary or Trustee hereunder; and to pay all costs and expenses incurred by Beneficiary or Trustee, including attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust or to exercise the power of sale hereunder.

**3.8 Actions by Beneficiary to Preserve Trust Estate.** Should Grantor fail to perform any of its obligations under this Deed of Trust, then Beneficiary, in its discretion, without obligation to do so and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereunder, may make or do the same. In connection therewith, and without limiting its general powers, Beneficiary shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Trust Estate or any part thereof; (b) to make additions, alterations, repairs and improvements to the Trust Estate or any part thereof which Beneficiary may consider necessary or proper to keep the Trust Estate in good condition and repair; (c) to commence, maintain, appear and participate in any action or proceeding affecting or which may affect, or which is necessary to protect, the security hereof or the rights or powers of Beneficiary or Trustee hereunder; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge or lien which in the judgment of Beneficiary may affect or appears to affect the security of this Deed of Trust or which create or may create a lien upon the Trust Estate or any part thereof or interest therein, whether prior and superior or subject and subordinate to the lien hereof, and (e) in exercising such powers, to pay necessary expenses incurred in connection therewith, to employ counsel and other consultants, and to pay such counsel's or consultants' fees and expenses. Immediately upon demand therefor by Beneficiary, Grantor shall pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, together with interest thereon according to the terms of the Debt Instrument, and all such sums shall be secured by this Deed of Trust.

**3.9 Inspections.** Beneficiary, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or in any part of the Property for the purpose of (a) inspecting same, and (b) performing any of the acts it is authorized to perform hereunder or under the terms of this Deed of Trust, the Debt Instrument, the Modification Agreement (Long Form), Amended and Restated Loan Guaranty, and any other instrument or agreement given to evidence or further secure the payment and performance of any obligation secured hereby (collectively, the "Loan Documents"). In the case of a request to transfer the Trust Estate or any part thereof in accordance with the terms hereof, Grantor shall pay all appraisal fees and related expenses incurred by Beneficiary in evaluating such request.

**3.10 Books and Records.** Grantor shall keep and maintain, or cause to be kept and maintained, proper and accurate books, records and accounts of the Trust Estate and of its own financial affairs to permit the preparation of financial statements therefrom. Beneficiary, through its agents, representative or employees, shall have the right, from time to time, at any time and at all times, during normal business hours, to examine, copy and audit such books, records and accounts. If the Property is at any time used for commercial or residential income purposes, Grantor shall deliver to Beneficiary, upon request, certified financial statements and profit-and-loss statements for Grantor and the Trust Estate prepared in accordance with generally accepted accounting principles.



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**3.11 Personal Property.** Grantor shall not remove from the Property any Personal Property (as defined in the "SECURITY AGREEMENT" Section below) except in the ordinary course of business and then only if such removed property is replaced with similar property of comparable quality.

**4. NEGATIVE COVENANTS OF GRANTOR.** Grantor hereby agrees as follows:

**4.1 Other Financing.** Grantor shall not create or permit to continue in existence any mortgage, pledge, security interest, lien, charge or encumbrance of any kind upon the Trust Estate or any part thereof or any interest therein except for: (a) the lien of this Deed of Trust, (b) liens for taxes and assessments not yet delinquent, and (c) such other liens or charges as are specifically approved in writing by Beneficiary. Grantor shall, at Grantor's expense, take all action necessary to promptly secure releases of all liens and encumbrances which in the opinion of Beneficiary are or may be prior and superior to Beneficiary's security interest.

**4.2 Transfers.**

**(a) Transfer of Trust Estate.** Grantor shall not, directly or indirectly, sell, convey, assign, further encumber, transfer, alienate or otherwise dispose of the Trust Estate or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Beneficiary. Any consent by Beneficiary permitting a transaction otherwise prohibited under this Section shall not constitute a consent to or waiver of any right of Beneficiary to withhold its consent on any subsequent occasion to a transaction not otherwise permitted by the provisions hereof.

**(b) Transfer of Beneficial Interest.** Without limiting the provisions of the subsection above, the occurrence of the following events, without Beneficiary's prior written consent, shall be deemed to constitute an unpermitted transfer of the Trust Estate: the issuance, sale, conveyance, transfer, disposition or encumbering, or the entering into of any agreement relating thereto, either voluntarily, involuntarily, by operation of law or otherwise, with respect to (i) more than ten percent (10%) in the aggregate at any time or over time of any class of the currently issued outstanding stock of or membership interest in Grantor, if a closely-held corporation or limited liability company, (ii) the beneficial interest in Grantor, if a trust, or (iii) a change of any general partner or joint venturer of Grantor, if a partnership or joint venture. For purposes of this subsection, "closely-held corporation" shall mean any corporation not listed on a national or regional stock exchange.

**(c) Transfer of Duties.** Grantor shall not transfer or delegate the duties of managing the Property under any management agreement, if any, to any person, firm, corporation, partnership, limited liability company or other entity without the prior written consent of Beneficiary.

**5. ASSIGNMENT OF RENTS AND PERFORMANCE OF LEASES.**

**5.1 Assignment of Rents and Leases.** Grantor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in and to the Leases and the Rents; provided, however, that so long as no Event of Default (as defined in the "Events of Default" Section below) has occurred and is continuing, Grantor shall have the right under a license granted hereby to collect and receive all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance,



operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Loan Documents, before using or applying such Rents for any other purpose. No Rents or such other income shall be distributed or paid to Grantor, unless such costs and expenses which are then due have been paid in full. Thereafter, so long as no Event of Default has occurred, the balance may be distributed to Grantor. If an Event of Default has occurred and is continuing, Grantor's right to collect and receive the Rents under the license granted hereby shall cease and the license shall be revoked automatically and, pursuant to the "Termination of License" Section below, Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. This is an absolute assignment and not an assignment for security only.

**5.2 Negative Covenants Regarding Leases.** Grantor shall not, without the prior written consent of Beneficiary, (a) cancel, terminate or consent to the surrender of any Lease, if the Property is used for commercial purposes, (b) modify or in any way alter the terms of any Lease, (c) release any lessee or guarantor from any obligations or conditions to be performed by any lessee or guarantor under any Lease, if the Property is used for commercial purposes, (d) collect any rent from any lessee for a period of more than one (1) month in advance, or (e) execute any further assignment of any of its right, title and interest in the Leases and the Rents.

**5.3 Affirmative Covenants Regarding Leases.** Grantor shall (a) observe, perform and discharge each and every obligation, term, covenant, condition and agreement of Grantor under the Leases, (b) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or guarantor thereof, (c) keep the Property leased at a good and sufficient rental and on such other terms and conditions as are reasonably acceptable to Beneficiary, (d) execute and deliver to Beneficiary upon demand, at any time and from time to time, any and all assignments and other instruments which Beneficiary may deem advisable to carry out the true purposes and intent of the assignment set forth in the "Assignment of Rents and Leases" Section above, and (e) at the request of Beneficiary, cause any or all tenants under a Lease to execute a subordination, nondisturbance and attornment agreement and estoppel certificate in form and substance satisfactory to Beneficiary, if the Property is used for commercial purposes.

**6. SECURITY AGREEMENT.** This Deed of Trust shall constitute a security agreement as that term is used in the Uniform Commercial Code as adopted in the state in which the Property is located (the "UCC") and Grantor hereby pledges and grants to Beneficiary, as additional collateral for the Secured Obligations, a security interest in all of the property described in the "GRANT IN TRUST" Section above which may be personal property (collectively, the "Personal Property"). Grantor shall procure any documents, including, without limitation, mortgagee or landlord waivers or subordination agreements, in form and substance satisfactory to Beneficiary, with respect to any and all Personal Property (or fixtures which are a part of the Trust Estate), deliver to Beneficiary any instrument, mark any chattel paper, give any notice and take any other actions which are necessary or desirable to perfect or to continue the perfection and priority of the security interest created hereunder, or to protect the Personal Property or fixtures against the rights, claims or interests of third parties, and to pay all costs incurred in connection therewith. Grantor hereby appoints Beneficiary as Grantor's true attorney-in-fact, coupled with an interest, to perform (but without any obligation to do so) any of the foregoing acts should Grantor fail to do so, irrevocable until such time as the Secured Obligations have been indefeasibly satisfied, to be exercised from time to time and at any time by Beneficiary following an Event of Default hereunder. Notwithstanding anything to the contrary contained in this Deed of Trust, Grantor agrees that Beneficiary is, and shall be deemed to be, the "secured party" as that term is defined in the UCC, and Beneficiary shall have all of the rights and remedies of a secured party under the UCC as well as any and all other rights and remedies available at law or in equity. Grantor, upon demand of Beneficiary, shall assemble the Personal Property and make it available to Beneficiary at the Property or a place which is reasonably convenient to Beneficiary, and Beneficiary's expense in retaking, holding, preparing for sale, selling or the like shall be borne by Grantor, such expenses to include Beneficiary's and Trustee's attorneys' fees



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incurred in connection therewith. Grantor agrees not to change Grantor's name or state of organization or residence, as the case may be, without Beneficiary's prior written consent.

**7. EVENTS OF DEFAULT AND REMEDIES.**

**7.1 Events of Default.** Any of the following events shall, at Beneficiary's option, constitute an event of default (an "Event of Default") hereunder:

(a) **Failure to Pay.** The failure of Grantor or Obligor to pay when due any installment of principal or interest under the Debt Instrument or any other sum as provided in any Loan Documents or any other instrument or agreement secured hereby, whether at maturity, by acceleration or as part of a prepayment or otherwise;

(b) **Failure to Perform.** The failure of Grantor or Obligor to promptly and completely observe or perform any term, condition, covenant, agreement or obligation contained in this Deed of Trust, any other Loan Documents or any other instrument or agreement secured hereby, and the continuation of such failure following the expiration of any applicable notice, cure or grace period, if any, provided for therein or herein;

(c) **Failure to Comply.** The failure of Grantor or Obligor to comply with any term, condition, covenant, agreement, law, ordinance or regulation now or hereafter affecting the Trust Estate or any part thereof; or

(d) **Other Defaults.** The occurrence of any "default" or "event of default" under any of the other Loan Documents (as defined therein) or any other instrument or agreement secured hereby.

(e) **Cross Default.** The occurrence of any default in the observance, performance or discharge of any condition, obligation, covenant or agreement contained in, or any Event of Default under, any of the following:

(i) The Debt Instrument, any deeds of trust securing repayment of the Debt Instrument, any Loan Agreement or Construction Loan Agreement, or any other instrument or document executed by Grantor or Obligor having reference to, arising out of or relating to any indebtedness evidenced by the Debt Instrument which recites that it is secured by this Deed of Trust or any deeds of trust (other than this Deed of Trust) securing the Debt Instrument; and

(ii) Any promissory note, Deed of Trust or other instrument or document at any time executed by Grantor or Obligor for the benefit of Beneficiary which recites that it is cross-defaulted with this Deed of Trust and provides that a default thereunder shall also be a default under this Deed of Trust.

**7.2 Remedies.** Upon the occurrence of any Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may, at its option:

(a) **Termination of License.** Terminate Grantor's right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or



such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

Upon default by Grantor(s) in the payment of the indebtedness secured by this Deed of Trust or in the performance of any agreement contained in this Deed of Trust, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary subject to any cure period provided in the Debt Instrument secured by this Deed of Trust. In such event and upon written request of the Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except the Trustee may bid at the Trustee's Sale. Proceeds of the Trustee's Sale shall be applied as follows: (1) to the expense of the sale, including reasonable Trustee's fee and attorneys' fees; (2) to the obligation secured by the Deed of Trust; and (3) the surplus, if any, shall be distributed to the persons entitled thereto or deposited in the registry of the appropriate court in compliance with the Deed of Trust Act of the State of Washington.

Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property that Grantor(s) had or had the power to convey at the time of Grantor(s) execution of this Deed of Trust, and such as Grantor(s) may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of the law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of a bona fide purchaser and encumbrancer for value.

(f) **Other Remedies.** Exercise all other rights and remedies provided herein, in any Loan Documents or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law. Upon the occurrence of an Event of Default hereunder, Beneficiary may proceed in any sequence to exercise its rights hereunder with respect to all or any portion of the Trust Estate and all or any portion of the Personal Property, and to exercise its rights under the "SECURITY AGREEMENT" Section above with respect to all or any portion of the Personal Property in accordance with the provisions of the UCC.

**7.3 Remedies Not Exclusive; Waiver.** No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the obligations secured hereby, Beneficiary, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Beneficiary may deem fit without waiving any rights with respect to such other security.

## **8. NONBORROWER GRANTOR.**

**8.1 Authority of Beneficiary.** If any Grantor is not an obligor under the Debt Instrument (hereinafter, "Nonborrower Grantor"), Nonborrower Grantor hereby authorizes Beneficiary to perform any of the following acts at any time and from time to time, all without notice to Nonborrower Grantor and without affecting Beneficiary's rights or Nonborrower Grantor's obligations under this Deed of Trust: (a) alter any terms of the Debt Instrument or any part of it, including renewing, compromising, extending or



accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Debt Instrument or any part of it, (b) take and hold security for the Debt Instrument, accept additional or substituted security for the Debt Instrument, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, sell or otherwise dispose of any such security, (c) apply any security now or later held for the Debt Instrument in any order that Beneficiary in its sole discretion may choose, and direct the order and manner of any sale of all or any part of it and bid at any such sale, (d) release Obligor of its liability for the Debt Instrument or any part of it, and (e) substitute, add or release any one or more guarantors or endorsers of the Debt Instrument. For purposes of this Section, all references to the Debt Instrument shall also include any instrument or agreement executed by Obligor currently with, preceding, or subsequent to the date of this Deed of Trust which is secured by this Deed of Trust in accordance with the terms hereof.

**8.2 Obligor's Financial Condition.** Nonborrower Grantor assumes full responsibility for keeping informed of Obligor's financial condition and business operations and all other circumstances affecting Obligor's ability to pay and perform its obligations to Beneficiary, and agrees that Beneficiary shall have no duty to disclose to Nonborrower Grantor any information which Beneficiary may receive about Obligor's financial condition, business operations or any other circumstances bearing on Obligor's ability to perform.

**8.3 Dispute Resolution.** This Deed of Trust hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed among Grantor, Nonborrower Grantor, and Beneficiary.

**9. SITE VISITS, APPRAISALS, OBSERVATION AND TESTING.** Beneficiary, through its agents, representatives or employees, is authorized to enter at any reasonable time upon or any part of the Property for the purpose of performing appraisals, observing the condition thereof, taking and removing soil, groundwater or other material samples, and conducting tests on any part thereof. Grantor agrees to cooperate with Beneficiary and its agents, representatives or employees (and use best efforts to cause the tenants on the Property to cooperate with same) in permitting access to the Property and in obtaining samples, operating and other relevant information for the Property. Beneficiary shall have no obligation or duty to do so, however, and no site visit, observation or testing by Beneficiary shall impose any liability on Beneficiary. In no event shall any site visit, observation or testing by Beneficiary be a representation that Hazardous Substances (as defined below) are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Grantor nor any other party is entitled to rely on any site visit, observation or testing by Beneficiary. Beneficiary owes no duty of care to protect Grantor or any other party against, or to inform Grantor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. Beneficiary shall (a) give Grantor reasonable notice to avoid interfering with Grantor's use of the Property in exercising any rights provided for in this Section, and (b) reimburse Grantor for the cost of repair of any physical injury to the Property caused by Beneficiary in exercising such rights. For purposes of this Section, "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or which is or becomes similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

**10. MISCELLANEOUS.**

**10.1 Governing Law.** This Deed of Trust is to be governed and construed in accordance with the laws of the state in which the Property is located and federal law as applicable, except with respect to any portion of the Property located in another state, in which case the laws of the state in which such portion of the Property is located (and federal law as applicable) shall be applicable hereto, but only to the extent required for Trustee or Beneficiary to enforce or realize upon the rights and remedies hereunder with respect thereto.



**10.2 Severability.** In the event any one or more of the provisions contained in this Deed of Trust, in the Debt Instrument or in any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

**10.3 Amendment.** This Deed of Trust cannot be modified, waived, discharged or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

**10.4 Waiver of Remedies.** By accepting payment of any amount secured hereby after its due date, or an amount which is less than the amount then due, or the performance of any obligation required hereunder after the date required for such performance, Beneficiary does not waive its rights either to require prompt payment or performance when due of all other amounts or obligations so secured, or to declare a default as herein provided for the failure to so pay or perform.

**10.5 No Implied Waiver.** No waiver by Beneficiary of any default or breach by Grantor hereunder shall be implied from any omission by Beneficiary to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default identified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Beneficiary to or of any act by Grantor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. No delay or omission of Trustee or Beneficiary in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Grantor and Beneficiary during the term hereof shall be deemed a waiver of or any way affect the right of Beneficiary to insist upon the performance by Grantor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Documents.

**10.6 Full Reconveyance.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Debt Instrument to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, expressed or implied, any or all 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."

**10.7 Notices.** Whenever Beneficiary, Grantor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication (including communications by telegraph, telex or telecommunication facilities providing facsimile transmission) shall be in writing and shall be effective only if the same is delivered by personal service, mailed (postage prepaid, return receipt requested), or telegraphed, telexed or transmitted addressed to the address set forth herein. Any such notice if so mailed shall be deemed to have been received by the addressee on the third day following the date of such mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**10.8 Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust and the Modification Agreement (Long Form), duly executed and acknowledged, is made a public record as provided by law.



**10.9 Certain Actions of Trustee.** 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 the Debt Instrument for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (a) reconvey any part of the Trust Estate, (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.

**10.10 Successor Trustee.** Beneficiary acting alone may, from time to time, by written instrument executed and acknowledged by Beneficiary and recorded in the County in which the Property is located, substitute a successor or successors to the Trustee named herein or acting hereunder.

**10.11 Successors and Assigns.** This Deed of Trust applies to and shall be binding on and enure to the benefit of all parties to this Deed of Trust and their respective successors and assigns.

**10.12 Interpretation.** In this Deed of Trust, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Deed of Trust.

**10.13 Joint and Several Liability.** All obligations of each Grantor hereunder shall be joint and several.

**10.14 Headings.** Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

**10.15 Waiver.** To the fullest extent permitted by law, Grantor waives the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust.

**10.16 Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Trust Estate unless Beneficiary consents to such merger in writing.

**10.17 In-House Counsel Fees.** Whenever Grantor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated cost for the services of in-house counsel.

**10.18 Request for Notice.** Grantor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth herein or at such other address as Grantor may designate pursuant to this Section. That address is also the mailing address of Grantor as debtor under the UCC. Beneficiary's address given herein is the address for Beneficiary as secured party under the UCC.

**10.19 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the UCC, as amended or recodified from time to time, covering any portion of the Trust Estate which now is or later may become a fixture attached to the Property.

**10.20 Counterparts.** This Deed of Trust and each other Loan Documents (other than the Debt Instrument) may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

**10.21 Statutory Notices.** ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW



Grantor has caused this Deed of Trust to be executed as of the day and year first above written.

**GRANTOR:**

Fidalgo Storage LLC,  
a Washington limited liability company

By: Howe Anacortes, LLC, a Washington limited liability company,  
Manager/Member

By: [Signature]  
Name: Robert D. Howe  
Title: Manager/Member

By: Matson Real Estate, LLC, a Washington limited liability company,  
Member

By: [Signature]  
Name: Robert L. Matson, Jr.  
Title: Member

By: [Signature]  
Name: Melodee Matson  
Title: Member

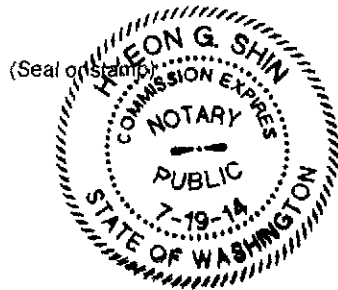


STATE OF WASHINGTON )  
COUNTY OF Snohomish )

I certify that I know or have satisfactory evidence that Robert D. Howe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager/Member of Howe Anacortes, LLC which is the Manager/Member of Fidalgo Storage LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2/24/2012

[Signature]  
(Signature)  
Hyeon Shin  
(Name legibly printed or stamped)



Notary Public in and for the State of Washington  
residing at Mill Creek  
My appointment expires 7/19/2014



201203130063  
Skagit County Auditor

Doc. Date: 2-28-12. # Pages: 18.

Notary Name: **Sharon Schlueter, Second Circuit**

Doc. Description: Deed of Trust.

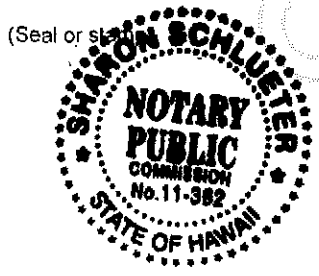
HAWAII  
STATE OF WASHINGTON )  
COUNTY OF Mauu )

Sharon Schlueter 2/28/12  
Notary Signature Date

I certify that I know or have satisfactory evidence that Robert L. Matson, Jr. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Member of Matson Real Estate, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-28-12.

Sharon Schlueter  
(Signature)  
SHARON SCHLUETER  
(Name legibly printed or stamped)



Hawaii  
Notary Public in and for the State of Washington  
residing at 3850 Waialea Alanui  
Waialea, HI 96753.  
My appointment expires \_\_\_\_\_

**SHARON SCHLUETER**  
My commission expires 11/13/2015

Hawaii  
STATE OF WASHINGTON )  
COUNTY OF Mauu )

I certify that I know or have satisfactory evidence that Melodee Matson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as Member of Matson Real Estate, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

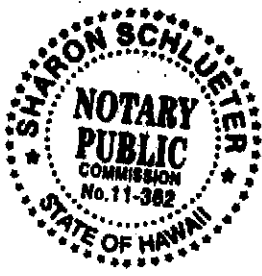
Dated: 2-28-12.

Sharon Schlueter  
(Signature)  
SHARON SCHLUETER  
(Name legibly printed or stamped)

(Seal or stamp)

Hawaii  
Notary Public in and for the State of Washington  
residing at 3850 Waialea Alanui  
Waialea, HI 96753.  
My appointment expires \_\_\_\_\_

**SHARON SCHLUETER**  
My commission expires 11/13/2015



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**EXHIBIT "A" to AMENDED AND RESTATED DEED OF TRUST  
DESCRIPTION OF REAL PROPERTY**

This Exhibit "A" is attached to that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated February 17, 2012 executed by Fidalgo Storage LLC, a Washington limited liability company as Grantor.

**PARCEL "A"**

The West 297 feet of the Northwest ¼ of the Northwest ¼ of the Southwest ¼ of Section 3, Township 34 North, Range 2 East, W.M., lying South of State Highway No. 1, as conveyed to the State of Washington by Deed recorded January 12, 1961, under Auditor's File No. 60301.

Situate in the City of Anacortes, County of Skagit, State of Washington.

**PARCEL "B"**

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al recorded August 16, 1994, under Auditor's File No. 9408160065 and delineated on the face of Skagit Sound Business Park Condominium recorded May 3, 2007, under Auditor's File No. 200705030118, records of Skagit County.

Situate in the City of Anacortes, County of Skagit, State of Washington.

EXCEPT those portions of real property described as:

Units 101, 102, 103, 109 and 111, all within Building 1, of said "Fidalgo Business Park Condominium";

AND EXCEPT Units 113, 114, 115, 116, 120, 121, 122, 131 and 132, Building 3, of said "Fidalgo Business Park Condominium";

Situate within the County of Skagit, State of Washington.

**NOW KNOW AS:**

**PARCEL "A"**

All "Fidalgo Business Park Condominium", according to Declaration recorded October 8, 2009 under Auditor's File No. 200910080142 and Survey Map and Plans recorded under Auditor's File No. 200910080141, all records of Skagit County, State of Washington;

EXCEPT those portions of real property described as:

Units 101, 102, 103, 109 and 111, all within Building 1, of said "Fidalgo Business Park Condominium";

\*110

AND EXCEPT Units \*113, 114, 115, 116, 120, 121, 122, 131 and 132, Building 3, of said "Fidalgo Business Park Condominium";

Situate within the County of Skagit, State of Washington.

**PARCEL "B"**

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al, recorded August 16, 1994, under Auditor's File No. 9408160065 and delineated on the face of "Skagit Business Park Condominium", recorded May 3, 2007, under Auditor's File No. 200705030118, AND "Fidalgo Business



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Park Condominium", recorded October 8, 2009, under Auditor's File No. 200910080141; All records of Skagit County, State of Washington;

Situate within the County of Skagit, State of Washington.

The Real Property or its address is believed to be commonly known as 9008-9012 Molly Lane, Anacortes, WA 98221

Real Property tax identification number previously known as 340203-3-008-0001; now known as follows:

4990-006-999-0000 Property I.D. No.: P129913	4990-003-106-0000 Property I.D. No.: P129884	4990-003-126-0000 Property I.D. No.: P129904
4990-001-104-0000 Property I.D. No.: P129870	4990-003-107-0000 Property I.D. No.: P129885	4990-003-127-0000 Property I.D. No.: P129905
4990-001-105-0000 Property I.D. No.: P129871	4990-003-108-0000 Property I.D. No.: P129886	4990-003-128-0000 Property I.D. No.: P129906
4990-001-106-0000 Property I.D. No.: P129872	4990-003-109-0000 Property I.D. No.: P129887	4990-003-129-0000 Property I.D. No.: P129907
4990-001-107-0000 Property I.D. No.: P129873	<del>4990-003-110-0000</del> <del>Property I.D. No.: P129888</del>	4990-003-130-0000 Property I.D. No.: P129908
4990-001-108-0000 Property I.D. No.: P129874	4990-003-111-0000 Property I.D. No.: P129889	4990-004-000-0000 Property I.D. No.: P129911
4990-001-110-0000 Property I.D. No.: P129876	4990-003-112-0000 Property I.D. No.: P129890	4990-005-000-0000 Property I.D. No.: P129912
4990-002-000-0000 Property I.D. No.: P129878	4990-003-117-0000 Property I.D. No.: P129895	
4990-003-101-0000 Property I.D. No.: P129879	4990-003-118-0000 Property I.D. No.: P129896	
4990-003-102-0000 Property I.D. No.: P129880	4990-003-119-0000 Property I.D. No.: P129897	
4990-003-103-0000 Property I.D. No.: P129881	4990-003-123-0000 Property I.D. No.: P129901	
4990-003-104-0000 Property I.D. No.: P129882	4990-003-124-0000 Property I.D. No.: P129902	
4990-003-105-0000 Property I.D. No.: P129883	4990-003-125-0000 Property I.D. No.: P129903	



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