

After Recording Mail To:

U.S. Bank National Association  
1420 Fifth Ave - Suite 1100  
Seattle, Washington 98101  
Attention: Edward D. Houghton

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

CHICAGO TITLE  
6200 44791

**Coversheet Recording Information:**

GRANTOR: COASTAL FARM REAL ESTATE, INC., an Oregon corporation

GRANTEE (Beneficiary): U.S. BANK NATIONAL ASSOCIATION, a national banking association, in its capacity as Administrative Agent for the Lenders

GRANTEE (Trustee): U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

ABBR. LEGAL DESCRIPTION: LT 3, LOT LINE ADJ. NO. 0006-94, REC. NO. 9501100685

PTN SE 1/4 NE 1/4 S31 T13N R19 EWM (LOT 1 SURVEY 7997779)

Ptn Lots 16 and 17 EWLCP S14 T22N R20EWM

PTN NE, 18-34-04

The complete legal descriptions are on Exhibit A.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBERS:  
403-000-017-09; 191331-14046; 232104 9031 08; P107489/8005-000-003-0002, P107490/8005-000-003-0100 and P107491/8005-000-003-0201

TABLE OF CONTENTS

1. TITLE AND USE ..... 4

1.1 Warranty of Title..... 4

1.2 NonAgricultural Use; Commercial Loan ..... 5

2. GRANTOR’S COVENANTS..... 5

2.1 Intentionally Omitted ..... 5

2.2 Payment of Taxes, Utilities, Liens and Charges ..... 5

(a) Taxes and Assessments ..... 5

(b) Utilities..... 5

(c) Labor and Materials ..... 5

(d) Liens and Charges ..... 6

(e) Taxes, Assessments and Other Charges Imposed ..... 6

2.3 Insurance ..... 6

(a) Coverages Required ..... 6

(b) Policies ..... 7

(c) Payment; Renewals ..... 7

(d) Application of Insurance Proceeds..... 7

(e) Application of Insurance Proceeds to Restoration ..... 8

(f) Transfer of Title ..... 8

2.4 Preservation and Maintenance of Property; Right of Entry ..... 9

(a) Preservation and Maintenance ..... 9

(b) Alterations ..... 9

(c) Right of Entry..... 9

2.5 Parking ..... 9

2.6 Use of Property ..... 9

2.7 Condemnation ..... 10

(a) Proceedings ..... 10

(b) Application of Condemnation Proceeds..... 10

2.8 Protection of Administrative Agent’s Security ..... 10

2.9 Reimbursement of Expenses ..... 11

2.10 Books and Records on Property ..... 11

3. RESERVES ..... 11

3.1 Deposits..... 11

3.2 Application of Deposits..... 12

3.3 Adjustments to Deposits ..... 12

3.4 Conditional Waiver ..... 12

4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE ..... 12

5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT ..... 13

5.1 Grant to Administrative Agent..... 13

5.2	Administrative Agent's Rights and Remedies .....	13
6.	ASSIGNMENT OF RENTS AND LEASES .....	14
6.1	Assignment of Rents and Leases.....	14
6.2	Collection of Rents.....	14
6.3	Grantor's Representations and Warranties.....	14
6.4	Leases of the Property .....	15
6.5	Administrative Agent in Possession; Appointment of Receiver .....	15
6.6	Application of Rents .....	16
6.7	Deficiencies.....	16
6.8	Administrative Agent Not Mortgagee in Possession .....	16
6.9	Enforcement .....	16
7.	LOAN AGREEMENT .....	17
7.1	Advances.....	17
7.2.	Assignment of Claims.....	17
7.3.	Default Under the Loan Agreement.....	17
8.	EVENTS OF DEFAULT .....	17
8.1	Events of Default .....	17
8.2	Inapplicability of Cure Periods .....	18
8.3	Form of Notice.....	18
9.	REMEDIES.....	18
9.1	Acceleration Upon Default; Additional Remedies.....	18
9.2	[Intentionally Omitted].....	19
9.3	Exercise of Power of Sale .....	19
9.4	Application of Sale Proceeds .....	19
9.5	Waiver of Order of Sale and Marshalling .....	19
9.6	Nonwaiver of Defaults .....	20
9.7	Expenses During Redemption Period .....	20
9.8	Foreclosure Subject to Tenancies.....	20
9.9	Remedies Cumulative .....	20
9.10	Administrative Agent's and Trustee's Expenses .....	20
10.	GENERAL .....	21
10.1	No Offset.....	21
10.2	Application of Payments .....	21
10.3	Appraisal Costs .....	21
10.4	Imposition of Tax.....	21
10.5	Reconveyance .....	22
10.6	Successor Trustee.....	22
10.7	Administrative Agent's Powers .....	22
10.8	Subdivision.....	22
10.9	Subrogation .....	22
10.10	Limitation on Interest and Charges .....	23
10.11	Additional Documents; Power of Attorney.....	23

10.12 Waiver of Statute of Limitations .....23  
10.13 Forbearance by Administrative Agent Not a Waiver.....23  
10.14 Entire Agreement; Modifications and Waivers.....24  
10.15 Notice .....24  
10.16 Governing Law; Severability; Captions.....24  
10.17 Definitions.....24  
10.18 Successors and Assigns; Agents .....24  
10.19 Number; Gender.....24  
10.20 Time .....25  
10.21 Request for Notice .....25  
10.22 Assignment of Loan Documents.....25  
10.23 Estoppel Certificate.....25  
10.24 Certain Obligations Unsecured .....25  
10.25 Jury Waiver.....25  
10.26 Third Party Grantor.....26  
10.27 Deed of Trust Act.....27

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEBTEDNESS AND THE LIEN AND SECURITY INTEREST GRANTED PURSUANT TO THIS DEED OF TRUST AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE BENEFICIARY HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT OF EVEN DATE HERewith, AS THE SAME MAY BE AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED, WAIVED AND/OR OTHERWISE MODIFIED FROM TIME TO TIME (THE "INTERCREDITOR AGREEMENT"), AMONG U.S. BANK NATIONAL ASSOCIATION, AS THE TERM LIEN REPRESENTATIVE, U.S. BANK NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT FOR CERTAIN LENDERS, AS THE ABL LIEN REPRESENTATIVE AND THE GRANTOR(S) (AS DEFINED THEREIN). IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS DEED OF TRUST, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN.**

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made and effective as of October 30, 2020, by Grantor, COASTAL FARM REAL ESTATE, INC., an Oregon corporation ("Grantor") with an address of 1355 Goldfish Farm Road SE, Albany, Oregon 97322. The Trustee is U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, whose mailing address is 111 S.W. Fifth Avenue, Suite 400, Portland, Oregon 97204. The beneficiary is U.S. BANK NATIONAL ASSOCIATION, a national banking association, in its capacity as "Administrative Agent" for the "Lenders" under the Loan Agreement (as hereinafter defined) (in such capacity, together with its successors and assigns, "Administrative Agent"), whose mailing address is 1420 Fifth Ave - Suite 1100, Seattle, Washington 98101.

For purposes of Article 9 of the Uniform Commercial Code (RCW 62A.9A), this Deed of Trust constitutes a Security Agreement with Grantor being the Debtor and Administrative Agent being the Secured Party. This Deed of Trust also constitutes a Financing Statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code, RCW 62A.9A-502(c) in the Official Records of the County in which the Property is located under the Uniform Commercial Code as adopted in the State of Washington with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now or hereafter become fixtures. The mailing address of the Grantor and the address of the Administrative Agent from which information may be obtained are set forth on the first page of this Deed of Trust.

In consideration of the loans (collectively, the "Loan") made by each of the Lenders to Coastal Farm & Home Supply LLC, an Oregon limited liability company ("Borrower"), evidenced by the various promissory notes, including, without limitation, the Master Note described below, and the benefit that will accrue to Grantor thereunder, Grantor hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Grantor's present and future estate, right, title, claim and interest, either in law or in equity, in and to the following property ("Property"):

(a) Each of the real properties described on Exhibit A, all rights to the alleys, streets and roads adjoining or abutting the real property, all easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, water, water rights and water stock, and all other rights, hereditaments, privileges and appurtenances now or hereafter belonging or in any way appertaining to such real property ("Land").

(b) All buildings, improvements and tenements now or hereafter located on each piece of the Land ("Improvements"), including, without limitation, all fixtures, articles and accessions of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Land and Improvements (whether such items are leased, owned or subject to any title-retaining or security instrument); all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposals, refrigerators and other appliances; all escalators and elevators, baths, sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; all furnishings of public spaces, halls and lobbies; and all shrubbery and plants. All such items shall be deemed part of the Land and not severable wholly or in part without material injury to the freehold.

(c) All of the present and future rents, revenues, issues, accounts, general intangibles, investment property, instruments, money, cash equivalents, profits and income of the Land and Improvements, all rights to receive rental assistance payments and rent subsidies with respect to the occupancy or use of all or any part of the Land and Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Land and Improvements, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements.

(d) All of Grantor's assets, including, without limitation, tangible and intangible personal property now or hereafter used or acquired in connection with or in any way arising out of or related to the ownership, development, operation or maintenance of the Land and Improvements, including, without limitation, all furniture, furnishings, equipment, supplies, inventory and other goods, wherever located, whether in the possession of Grantor, warehousemen, bailee or any other person; all site plans, plats, architectural plans, specifications, work drawings, surveys engineering reports, test borings, market surveys, and other similar work products; all permits, licenses, franchises and trade names; all contract rights (including, without limitation, all architectural, construction, engineering, consulting and management contracts, all insurance policies, and all performance, payment, completion and other surety bonds); and all claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents, general intangibles and business records.

(e) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to the Land or the Improvements.

(f) All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all insurance proceeds and condemnation awards.

(g) All proceeds of the foregoing.

TO SECURE THE FOLLOWING ("Secured Obligations"):

(1) Payment of the sum of the aggregate amount of \$55,000,000, with interest thereon, according to the terms and provisions of that certain Master Promissory Note of even date herewith (the "Note"), made by Borrower payable to Administrative Agent for the benefit of the Lenders.

(2) Payment of all other sums which are or may become owing from Grantor and Borrower under the Loan Documents (as hereinafter defined).

(3) Performance of all other obligations of Grantor and Borrower under the Loan Documents.

(4) Payment and performance of all obligations of Grantor under this Deed of Trust, together with all advances, payments or other expenditures made by Administrative Agent, Lenders or Trustee as or for the payment or performance of any such obligations of Grantor.

(5) Payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby.

(6) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (a) modifications, extensions or renewals at a different rate of interest, or (b) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a substitute or renewal promissory note or notes.

(7) All indebtedness, obligations, covenants and agreements of Borrower under any agreement between Borrower and Administrative Agent and Lenders, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, cap, collar or floor transaction, swap option, or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing, but excluding any Excluded Swap Obligations (as defined in Exhibit C attached hereto).

Notwithstanding anything contrary in the foregoing, the maximum aggregate amount of the Secured Obligations secured hereby shall not exceed the maximum amount possible without rendering the lien and security interest granted herein subject to avoidance under applicable law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of the Bankruptcy Code) (collectively, "Fraudulent Transfer

Laws”), and any analysis of Fraudulent Transfer Laws shall take into account Grantor’s rights of contribution from the Credit Parties and subrogation with respect to the Credit Parties.

As used in the definition of “Secured Obligations”, the term “obligations” is used in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities described in items (1) through (7) above, whether heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation.

As used herein, the term “Loan Documents” means the Note, this Deed of Trust, the Loan and Security Agreement (the “Loan Agreement”) between Administrative Agent, each of the lenders from time to time party thereto (“Lenders”), and Borrower of even date herewith, and all related documents and instruments, except the Unsecured Real Estate Environmental Indemnity of even date herewith and executed by Borrower, Grantor and certain other parties in favor of Administrative Agent and Lenders (the “Indemnity Agreement”), and any and all modifications, extensions, renewals and replacements thereof. The Secured Obligations may be indexed, amended, modified, adjusted, renewed or renegotiated. Grantor’s obligations under the Indemnity Agreement are not secured by this Deed of Trust. Except as provided in the preceding sentence, all terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property are hereby deemed to have notice of the terms of the Secured Obligations and that this Deed of Trust secures future advances, and to have notice, if provided therein, that: (a) the Note, the Loan Agreement or any other Secured Obligation may permit borrowing, repayment and reborrowing and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time. Funds may be advanced by Administrative Agent and Lenders, repaid by Borrower and subsequently readvanced by Administrative Agent and Lenders. Absent default under the terms of the Secured Obligations, all advances thereunder by Administrative Agent and Lenders are obligatory and are secured by this Deed of Trust. All such obligatory advances shall have the same priority as the funds initially advanced under any such Secured Obligation.

GRANTOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

**1. TITLE AND USE**

**1.1 Warranty of Title**

Grantor warrants, represents, covenants and agrees as follows: (a) Grantor holds marketable fee simple title to the Property with the full right and power to grant, convey and assign the Property; (b) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for Permitted Liens (as such term is defined in the Loan Agreement) and the exceptions to title set forth on Exhibit B attached hereto (the “Permitted Exceptions”); (c) no other lien or encumbrance, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Grantor without the prior written consent of Administrative Agent, unless permitted pursuant to the terms of the Loan Agreement; (d) no default on the part of Grantor or, to Grantor’s knowledge, any other person exists under any of the Permitted Exceptions and, to Grantor’s knowledge, all of the Permitted



Exceptions are in full force and effect and in good standing, without modification; (e) complete and current copies of the Permitted Exceptions have been furnished to Administrative Agent, and none of them have been or will be modified by Grantor without Administrative Agent's prior written consent; (f) Grantor shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Administrative Agent a copy of all notices delivered in connection with the Permitted Exceptions; (g) Administrative Agent has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Grantor shall, from time to time, at the reasonable request of Administrative Agent, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Administrative Agent may reasonably request; and (h) Grantor shall forever warrant and defend the Property unto Administrative Agent against all claims and demands of any other person whatsoever, subject only to Permitted Liens, nondelinquent taxes and assessments and the Permitted Exceptions.

## **1.2 NonAgricultural Use; Commercial Loan**

Grantor warrants to Administrative Agent that (a) the Property is not used principally for agricultural purposes and (b) the Loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.

## **2. GRANTOR'S COVENANTS**

### **2.1 Intentionally Omitted**

### **2.2 Payment of Taxes, Utilities, Liens and Charges**

#### **(a) Taxes and Assessments**

Except as the same may otherwise be paid under Section 3, Grantor shall pay when due directly to the payee thereof all taxes and assessments (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust, except to the extent the nonpayment of which is permitted under the Loan Agreement. Upon request, Grantor shall promptly furnish to Administrative Agent all notices of amounts due under this subparagraph and all receipts evidencing such payments.

#### **(b) Utilities**

Grantor shall pay when due all utility charges and assessments for services furnished to the Property, except to the extent the nonpayment of which is permitted under the Loan Agreement.

#### **(c) Labor and Materials**

Grantor shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property, except to the extent the nonpayment of which is permitted under the Loan Agreement.

**(d) Liens and Charges**

Grantor shall promptly discharge any lien, encumbrance or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property, except to the extent the nonpayment of which is permitted under the Loan Agreement; provided that Grantor shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate proceedings conducted in good faith and with due diligence, in which event Grantor, upon prior written notice to Administrative Agent, may postpone or defer payment of such lien, encumbrance or other charge so long as (i) such proceedings shall operate to prevent the collection of the lien, encumbrance or other charge; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; and (iii) Grantor, before the date such lien, encumbrance or other charge becomes delinquent, gives such reasonable security as may be requested by Administrative Agent to ensure payment thereof and prevent any forfeiture or loss of the Property or any part thereof.

**(e) Taxes, Assessments and Other Charges Imposed**

If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) which subjects Administrative Agent or any Lender to any increase in any real property transfer tax, assessment or similar charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Grantor shall pay such increased amount of real property transfer tax, assessment or similar charge to Administrative Agent, for the benefit of the Lenders, on demand; provided that if any such payment would be unlawful, Administrative Agent may declare all accrued interest and the entire principal balance of the Note immediately due and payable.

**2.3 Insurance**

**(a) Coverages Required**

Grantor shall keep the following insurance coverages in effect with respect to the Property:

(1) Insurance against loss by fire, earthquake and the hazards now or hereafter embraced by the standard "special cause of loss" form of insurance, in an amount equal at all times to the full insurable value of the Improvements. All such insurance coverage shall contain a "replacement cost endorsement" without reduction for depreciation, and shall also contain loss of rents and/or business interruption insurance coverage, a fluctuating value endorsement with a waiver of the co-insurance clause (or an agreed amount endorsement with an inflation guard endorsement), and shall contain such other endorsements as Administrative Agent may reasonably request. All such endorsements shall be in form and substance satisfactory to Administrative Agent.

(2) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property in amounts and on terms acceptable to Administrative Agent.

(3) Flood insurance in an amount satisfactory to Administrative Agent and on terms satisfactory to Administrative Agent if the Land is located in a designated flood hazard area.

(4) Rental and/or business interruption insurance for a period of not less than twelve months in amounts and otherwise on terms satisfactory to Administrative Agent.

(5) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Administrative Agent may from time to time reasonably require.

**(b) Policies**

Each insurance policy shall be with a company and in a form acceptable to Administrative Agent. Each hazard insurance policy shall include a Form 438BFU or equivalent mortgagee endorsement in favor of Administrative Agent. Each liability insurance policy shall name Administrative Agent as an additional insured. All required policies will provide for at least ten days' written notice to Administrative Agent prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Grantor shall furnish to Administrative Agent the original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Grantor hereby assigns to Administrative Agent all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

**(c) Payment; Renewals**

Grantor shall promptly furnish to Administrative Agent all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Section 3, Grantor shall pay all premiums on insurance policies directly to the carrier. At least 30 days prior to the expiration date of each such policy, Grantor shall furnish to Administrative Agent a renewal policy in a form acceptable to Administrative Agent, together with evidence that the renewal premium has been paid.

**(d) Application of Insurance Proceeds**

In the event of any material loss, Grantor shall give prompt written notice thereof to the insurance carrier and Administrative Agent. Grantor hereby authorizes Administrative Agent as Grantor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Administrative Agent's or Grantor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Administrative Agent shall have no obligation to do so. Administrative Agent shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(2) The reimbursement of Grantor, under Administrative Agent's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Administrative

Agent may, at its option, condition the reimbursement on Administrative Agent's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Administrative Agent may reasonably require.

Nothing herein contained shall be deemed to excuse Grantor from restoring, repairing or maintaining the Property as provided in Section 2.4, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

**(e) Application of Insurance Proceeds to Restoration**

Notwithstanding the provisions of Section 2.3(d), Grantor, rather than Administrative Agent, shall have the right to direct the application of insurance proceeds to payment of the Secured Obligations or to repair or restoration of the Property upon satisfaction of the following conditions:

(1) There is then no Event of Default nor any event or condition which would be an Event of Default if not cured within the time allowed under the Loan Documents.

(2) If the proceeds are to be applied to repair or restoration then in addition to the matters required under Section 2.3(d)(2) above, Administrative Agent shall have approved each of the following with respect to the repair or restoration: (i) the construction contract, and if required by Administrative Agent, payment and performance bonds with dual obligee rider; (ii) evidence that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if insufficient, the deficiency shall be deposited with Administrative Agent for disbursement prior to disbursement of insurance proceeds; (iii) evidence that Grantor has funds or insurance proceeds are sufficient to pay operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (iv) evidence that upon such repair or restoration the Property will be in compliance with all applicable laws, ordinances and regulations; (v) evidence that such repair or restoration of the Property will be completed at least 30 days before the current maturity date under the Note; and (vi) evidence that upon the completion of any such repair or restoration the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

(3) Each disbursement shall be made in accordance with and subject to the provisions of the Loan Agreement.

(4) Grantor shall execute and deliver to Administrative Agent such additional security documents and instruments as Administrative Agent deems necessary to continue and to perfect Administrative Agent's security interest in the Property.

**(f) Transfer of Title**

If the Property is sold pursuant to Section 4 or if Administrative Agent otherwise acquires title to the Property, Administrative Agent shall have all of the right, title and interest of Grantor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

## **2.4 Preservation and Maintenance of Property; Right of Entry**

### **(a) Preservation and Maintenance**

Grantor represents and warrants that the Improvements are free from damage caused by fire or other casualty. Grantor shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Administrative Agent may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including the improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair, subject to ordinary wear and tear, and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

### **(b) Alterations**

None of the Improvements shall be structurally altered, removed or demolished, in whole or in part, without Administrative Agent's prior written consent. Administrative Agent shall not unreasonably withhold or delay its consent to minor structural alterations if Grantor furnishes plans and assurances that the work will be completed in good workmanlike quality and Administrative Agent determines in its reasonable business judgment that the value of the Property will not be materially and adversely affected. Grantor shall not remove any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property at any time without Administrative Agent's prior written consent unless actually replaced by an article of equal suitability which is owned by Grantor free and clear of any lien or security interest.

### **(c) Right of Entry**

Administrative Agent is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property to determine Grantor's compliance with this Section.

## **2.5 Parking**

If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Grantor shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Grantor shall furnish to Administrative Agent satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

## **2.6 Use of Property**

Grantor represents and warrants to Administrative Agent that the Land, the Improvements and their intended use by Grantor comply with all applicable restrictive covenants, zoning and subdivision

laws, ordinances, regulations and legal requirements, building codes, flood disaster laws, applicable health and environmental laws and regulations and all other laws, ordinances, regulations, orders and legal requirements issued by any state, federal or municipal authority having or claiming jurisdiction over the Property. Grantor shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property and its intended use, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Administrative Agent has otherwise agreed in writing, Grantor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Grantor shall not initiate or acquiesce in a change in the zoning classification of the Property without Administrative Agent's prior written consent.

## **2.7 Condemnation**

### **(a) Proceedings**

Grantor shall promptly notify Administrative Agent of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Grantor shall appear in and prosecute any such action or proceeding unless otherwise directed by Administrative Agent in writing. Grantor authorizes Administrative Agent, at Administrative Agent's option, as attorney-in-fact for Grantor, to commence, appear in and prosecute, in Administrative Agent's or Grantor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Administrative Agent, and all proceeds of any such awards, payments, damages or claims shall be paid to Administrative Agent, for the benefit of Lenders, to be applied in accordance with Section 2.7(b).

### **(b) Application of Condemnation Proceeds**

Administrative Agent shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.3(d) relating to the application of insurance proceeds.

## **2.8 Protection of Administrative Agent's Security**

Grantor shall give notice to Administrative Agent of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Administrative Agent or Trustee therein, or the rights or remedies of Administrative Agent or Trustee under the Loan Documents. If any such action or proceeding is commenced and there is an uncured Event of Default, or Grantor fails to perform any of the Secured Obligations, Administrative Agent or Trustee may, at their option, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the property, make any entries upon the Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Grantor's failure to perform the Secured Obligations (without waiving such default by Grantor), or (iii) otherwise protect Administrative Agent's or Trustee's interests. Grantor shall pay all losses, damages, fees, costs and expenses incurred by Administrative Agent and Trustee in taking such actions; including, without

limitation, such amounts incurred by the Administrative Agent or Lenders described in Section 11.3 of the Loan Agreement.

### **2.9 Reimbursement of Expenses**

All amounts disbursed by Administrative Agent, Lenders or Trustee pursuant to Section 2.8 or any other provision of this Deed of Trust or the other Loan Documents, with interest thereon at the highest default rate provided in the Loan Agreement ("Default Rate") from the date of disbursement until repaid, shall constitute a Secured Obligation. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

### **2.10 Books and Records on Property**

Grantor shall keep and maintain at Grantor's address stated above, or such other place as Administrative Agent may approve in writing, books of account and records adequate to reflect correctly the results of operation of the Property and copies of all written contracts, leases and other documents affecting the Property. Such books, records, contracts, leases and other documents shall be subject to examination, inspection and copying at any reasonable time by Administrative Agent. Grantor shall furnish to Administrative Agent, within 20 days after Administrative Agent's request therefor, the following documents, each certified to Administrative Agent by Grantor as being true, correct and complete: (a) copies of all leases and other agreements for occupancy or use of all or any portion of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit, and the number and term of any renewal options, (c) copies of the most recent real and personal property tax statements for the Property, and (d) copies of the most recent statements for the insurance coverage maintained pursuant to this Deed of Trust.

## **3. RESERVES**

### **3.1 Deposits**

If required by Administrative Agent, Grantor shall, at the time of making each monthly installment payment under the Loan, deposit with Administrative Agent a sum, as estimated by Administrative Agent, equal to (i) the taxes and special assessments next due on the Property, and (ii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two months prior to the date when such taxes, special assessments and premiums will become delinquent. Administrative Agent may require Grantor to deposit with Administrative Agent, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Grantor or the Property as Administrative Agent reasonably deems necessary to protect Administrative Agent's interests ("Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Administrative Agent's option. If required by Administrative Agent, Grantor shall promptly deliver to Administrative Agent all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Unless Grantor and Administrative Agent otherwise agree in writing, Administrative Agent shall not be required to pay Grantor any

interest, earnings or profits on any sums deposited with Administrative Agent. All sums deposited with Administrative Agent under this Section 3.1 are hereby pledged as security for the Secured Obligations.

### **3.2 Application of Deposits**

All such deposited sums shall be held by Administrative Agent and applied in such order as Administrative Agent elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Administrative Agent and entails no responsibility on Administrative Agent's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Administrative Agent, any funds on hand shall be turned over to the assignee and any responsibility of Administrative Agent with respect thereto shall terminate. Each transfer of the Property in accordance with Section 4 shall automatically transfer to the transferee all rights of Grantor with respect to any funds deposited hereunder. Upon payment in full of the Secured Obligations, Administrative Agent shall promptly refund to Grantor the remaining balance of any deposits then held by Administrative Agent.

### **3.3 Adjustments to Deposits**

If the total deposits held by Administrative Agent exceed the amount deemed necessary by Administrative Agent to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Administrative Agent on the next due installment or installments of such deposits. If at any time the total deposits held by Administrative Agent are less than the amount deemed necessary by Administrative Agent to provide for the payment of such taxes, assessments, premiums and Other Impositions, Grantor shall promptly deposit the deficiency with Administrative Agent after receipt of written demand from Administrative Agent.

### **3.4 Conditional Waiver**

Notwithstanding the foregoing, Administrative Agent shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes, assessments, premium and Other Impositions, or until the occurrence of an Event of Default.

## **4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

Neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, leased (except as provided in this Section 4 or otherwise approved by Administrative Agent), or otherwise transferred by Grantor; nor shall there be any Change of Control (as such term is defined in the Loan Agreement). Any such action without Administrative Agent's prior written consent shall be deemed to increase the risk of Administrative Agent and shall constitute an Event of Default if not corrected within five days after Administrative Agent's delivery of written demand to Grantor. Administrative Agent may, in its sole discretion, consent to any such action subject to such terms and conditions as Administrative Agent may require, including, without limitation, the payment of a transfer review fee, an assumption fee of one percent (1%) of the principal balance of the Note and an increase in the interest rate of the Note.



## 5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

### 5.1 Grant to Administrative Agent

This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust, and any sums deposited with Administrative Agent by Grantor pursuant to the terms of Section 3.1 herein; and

(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Grantor as Debtor and Administrative Agent as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust);

and Grantor hereby grants Administrative Agent a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Grantor hereby authorizes Administrative Agent to file or cause to be filed such financing statements as reasonably deemed necessary to perfect, preserve, continue, extend in time or maintain the security interests herein contained. Such financing statements may contain a description of collateral broader than as set forth in this Deed of Trust. Grantor and Administrative Agent agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Land.

### 5.2 Administrative Agent's Rights and Remedies

With respect to the Property subject to the foregoing security interest, Administrative Agent shall have all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including, without limitation, the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Administrative Agent may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Administrative Agent's remedies. Upon demand by Administrative Agent following an Event of Default hereunder, Grantor shall assemble any items of personal property and make them available to Administrative Agent at the Land. Administrative Agent shall give Grantor at least five days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law.

## **6. ASSIGNMENT OF RENTS AND LEASES**

### **6.1 Assignment of Rents and Leases**

As security for the Secured Obligations, Grantor assigns and transfers to Administrative Agent and grants Administrative Agent a security interest in and to all right, title and interest of Grantor in and to: (a) any and all present and future leases, subleases, and licenses and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof ("Leases"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits, accounts and revenues ("Rents") now due or which may become due or to which Grantor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including, without limitation, minimum, additional, percentage and deficiency rents and liquidated damages.

### **6.2 Collection of Rents**

Prior to any Event of Default hereunder, Grantor shall have a license to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Administrative Agent and Grantor, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Grantor under the Leases, and fourth to the Secured Obligations, with the balance, if any, to the account of Grantor provided there is no Event of Default. Upon delivery of written notice by Administrative Agent to Grantor of an Event of Default hereunder and stating that Administrative Agent exercises its rights to the Rents, and without the necessity of Administrative Agent entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Administrative Agent shall immediately and for so long as such Event of Default continues be entitled to possession of all Rents from the Property as the same become due and payable, including, without limitation, Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Grantor as trustee for the benefit of Administrative Agent only. Upon delivery of such written notice by Administrative Agent, Grantor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Administrative Agent on Administrative Agent's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of an Event of Default by Grantor. Grantor hereby authorizes Administrative Agent as Grantor's attorney-in-fact to make such direction to tenants and occupants upon Grantor's failure to do so as required herein. Payments made to Administrative Agent by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Grantor. Administrative Agent may exercise, in Administrative Agent's or Grantor's name, all rights and remedies available to Grantor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Administrative Agent to perform any of Grantor's obligations under any of the Leases.

### **6.3 Grantor's Representations and Warranties**

Grantor hereby represents and warrants to Administrative Agent that Grantor has not executed and will not execute any other assignment of said Leases or Rents, that Grantor has not performed and

will not perform any acts and has not executed and will not execute any instrument which would prevent Administrative Agent from exercising its rights under this Section 6, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Grantor further represents and warrants to Administrative Agent that all existing Leases are in good standing and there is no default thereunder, whether by Grantor or lessee, and that, to Grantor's knowledge, there is no event or condition which, with notice or the passage of time or both, would be a default thereunder. Grantor shall execute and deliver to Administrative Agent such further assignments of Rents and Leases of the Property as Administrative Agent may from time to time request.

#### **6.4 Leases of the Property**

Grantor shall comply with and observe Grantor's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. At Administrative Agent's request, Grantor shall furnish Administrative Agent with executed copies of all Leases now existing or hereafter made and all Leases hereafter entered into shall use a form previously approved by Administrative Agent. Hereafter all nonresidential Leases and tenants shall be subject to Administrative Agent's prior written approval and shall specifically provide that the tenant attorns to any person succeeding to the interest of Grantor upon any foreclosure of this Deed of Trust or conveyance in lieu thereof. Such attornment shall be in such form as Administrative Agent may approve and shall provide that Tenant shall not have the right of set off or defense to payment of rents for any event or act that occurred prior to such successor obtaining title to Grantor's interest except to the extent such event or act is continuing at the time such successor obtains such title. Tenant shall also agree to execute such further evidences of attornment as Administrative Agent may from time to time request. Without Administrative Agent's written consent, Grantor shall not (a) collect or accept payment of any Rents more than one month prior to the due dates thereof; (b) modify, surrender or terminate any non-residential Lease; (c) waive, discharge, release or modify the obligations of any tenant or other occupant of the Property under any non-residential Lease; or (d) request or consent to the subordination of any non-residential Lease to any lien subordinate to this Deed of Trust. Any attempted action in violation of this Section 6.4 shall be null and void. Without in any way limiting the requirement of Administrative Agent's consent hereunder, any sums received by Grantor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Grantor shall be held in trust by Grantor for such purpose.

#### **6.5 Administrative Agent in Possession; Appointment of Receiver**

Upon and during the continuance of any Event of Default, Administrative Agent may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Administrative Agent's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Grantor could do the same, including, without limitation, the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Administrative Agent to protect the security of this Deed of Trust. During the continuance of an Event of Default, Administrative Agent shall be entitled (regardless of

the adequacy of Administrative Agent's security) to the appointment of a receiver, Grantor hereby consenting to the appointment of such receiver.

Said receiver may serve without bond and may be Administrative Agent or an employee of Administrative Agent. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Administrative Agent in this Section 6. Administrative Agent or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

#### **6.6 Application of Rents**

All Rents collected subsequent to delivery of written notice by Administrative Agent to Grantor of an Event of Default shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including, without limitation, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Grantor under the Leases, and then to other Secured Obligations. Administrative Agent or the receiver shall be liable to account only for those Rents actually received. Administrative Agent shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Property by reason of anything done or left undone by Administrative Agent under this Section.

#### **6.7 Deficiencies**

To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Grantor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes, plus interest, shall constitute a Secured Obligation. Such excess sums shall be payable upon demand by Administrative Agent and shall bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

#### **6.8 Administrative Agent Not Mortgagee in Possession**

Nothing herein shall constitute Administrative Agent a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Administrative Agent.

#### **6.9 Enforcement**

Administrative Agent may enforce this assignment without first resorting to or exhausting any security or collateral for the Secured Obligations.

## **7. LOAN AGREEMENT**

### **7.1 Advances**

The Loan Agreement provides for the disbursement of loan funds with respect to the matters described therein. The Loan Agreement is hereby incorporated herein and made a part of this Deed of Trust. All advances made by Administrative Agent or Lenders pursuant to the Loan Agreement shall constitute a Secured Obligation, and such advances shall be deemed to be obligatory. Any sums advanced by Administrative Agent or Lenders for the purpose of financing tenant improvements for the benefit of Grantor shall be treated as advances pursuant to the Loan Agreement and shall constitute a Secured Obligation. All such sums shall bear interest from the date of disbursement at the highest rate applicable to the Loan as stated in the Loan Agreement.

### **7.2. Assignment of Claims**

From time to time as Administrative Agent deems necessary to protect Administrative Agent's interest, Grantor shall, upon request of Administrative Agent, execute and deliver to Administrative Agent in such form as Administrative Agent shall direct, assignments of any and all rights or claims which relate to the construction of the Improvements, and which Grantor may have against any party supplying or who has supplied labor, materials or services in connection with the construction of the Improvements.

### **7.3. Default Under the Loan Agreement**

Upon an Event of Default, Administrative Agent may, at its option, with or without entry upon the Property, exercise any of the rights or remedies provided in the Loan Agreement, exercise any of the rights or remedies provided in this Deed of Trust, or do both.

## **8. EVENTS OF DEFAULT**

### **8.1 Events of Default**

Any one or more of the following is an "Event of Default":

- (a) Borrower fails to make payment on any Note or any Secured Obligation when due.
- (b) Grantor fails to make any payment under this Deed of Trust or any of the other Loan Documents to which it is a party when due
- (c) There is a default under any of the Permitted Exceptions, if not cured within any cure period given in the Permitted Exceptions.
- (d) There is an Event of Default as defined in the Loan Agreement or any of the other Loan Documents.
- (e) There is an Event of Default under the Indemnity Agreement.

(f) Grantor fails to perform any other covenant, agreement or obligation under this Deed of Trust or any of the other Loan Documents to which it is a party, if not cured within the time allowed.

### **8.2 Inapplicability of Cure Periods**

All cure periods provided in this Deed of Trust or the other Loan Documents shall be inapplicable if, in Administrative Agent's reasonable judgment, the default is not capable of being cured within the time allowed, or a delay in Administrative Agent's enforcement of its rights and remedies is likely to result in a material impairment of its security.

### **8.3 Form of Notice**

At Administrative Agent's option, any written notice of default given to Grantor under Section 8.1 may be given in the form of a statutory notice of default under the Washington Deed of Trust Act or any other form as Administrative Agent may elect.

## **9. REMEDIES**

### **9.1 Acceleration Upon Default; Additional Remedies**

Upon any Event of Default, Administrative Agent may, at its option and without notice to or demand upon Grantor, exercise any one or more of the following actions:

- (a) Declare all the Secured Obligations immediately due and payable.
- (b) Bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents.
- (c) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Grantor consents to such appointment.
- (d) Foreclose this Deed of Trust as a mortgage.
- (e) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (f) Obtain a deficiency judgment if the net sales proceeds of any sale of the Property under the power of sale granted by this Deed of Trust are insufficient to pay in full all of the Secured Obligations.
- (g) Elect to exercise its rights with respect to the Leases and the Rents.
- (h) Exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents.

- (i) Exercise any other right or remedy available under law or in equity.

**9.2 [Intentionally Omitted]**

**9.3 Exercise of Power of Sale**

For any sale under the power of sale granted by this Deed of Trust, Administrative Agent or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Administrative Agent and permitted by applicable law.

Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Administrative Agent in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of Administrative Agent in selling such Property. Any person permitted by law to do so may purchase at any sale.

Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

**9.4 Application of Sale Proceeds**

Except as may otherwise be required by law, the proceeds of any sale under this Deed of Trust shall be applied in the following priority:

(a) Payment of the costs and expenses of the sale; including, without limitation, Trustee's fees, attorneys' fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

(b) Payment of all sums expended by Administrative Agent under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.

(c) Payment of all other Secured Obligations in any order that Administrative Agent chooses.

(d) The remainder, if any, to the person or persons legally entitled to it.

**9.5 Waiver of Order of Sale and Marshalling**

Administrative Agent shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies

provided herein. To the fullest extent permitted by law, Grantor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

#### **9.6 Nonwaiver of Defaults**

The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

#### **9.7 Expenses During Redemption Period**

If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the lesser of the Default Rate or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

#### **9.8 Foreclosure Subject to Tenancies**

Administrative Agent shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

#### **9.9 Remedies Cumulative**

To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Administrative Agent and Grantor, and may be exercised concurrently, independently or successively, in any order whatsoever. Administrative Agent may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

#### **9.10 Administrative Agent's and Trustee's Expenses**

Grantor shall pay all of Administrative Agent's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including, without limitation, attorneys' fees and disbursements, foreclosure costs, title charges, and expenses incurred in any bankruptcy, reorganization, liquidation, receivership or similar proceeding and all fees and expenses described in Section 11.3 of the Loan Agreement. All such sums, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the lesser of the Default Rate or the maximum rate permitted by law.



## **10. GENERAL**

### **10.1 No Offset**

Grantor's obligation to timely pay and perform all obligations under the Loan Documents to which it is a party and this Deed of Trust shall be absolute and unconditional and shall not be affected by any event or circumstance; including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Grantor or any guarantor may have or claim against Administrative Agent or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Grantor or any guarantor may have in damages or otherwise against Administrative Agent or any other person or entity; provided that Grantor shall maintain a separate action thereon.

### **10.2 Application of Payments**

Except as applicable law or this Deed of Trust or the other Loan Documents may otherwise provide, all payments received by Administrative Agent under the Loan Agreement or this Deed of Trust may be applied by Administrative Agent to the Secured Obligations in such order as Administrative Agent, at its option, may determine and in compliance with the Loan Agreement.

### **10.3 Appraisal Costs**

In the event the Financial Institutions Reform, Recovery, and Enforcement Act, as amended, any regulatory agency, or any internal policy of Administrative Agent requires Administrative Agent to obtain an appraisal of the Property, Grantor shall reimburse Administrative Agent on demand for payment of the costs of such appraisal.

### **10.4 Imposition of Tax**

For purposes of this Section, "Tax" shall mean:

(a) a specific tax on deeds of trust or on all or any part of the indebtedness secured by a deed of trust; or (b) a specific tax on the owner of the Property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust; or (c) a tax on property covered by a deed of trust chargeable against Administrative Agent, any Lender or a trustee under the deed of trust or the holder of the note secured by the deed of trust; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the obligations secured hereby or on payments of principal and interest made by a grantor under a deed of trust. If any Tax is enacted subsequent to the date of this Deed of Trust, enactment of the Tax shall constitute an Event of Default, and Administrative Agent may exercise any or all of the remedies available to it upon the occurrence of any Event of Default, unless the following conditions are met: (i) Grantor may lawfully pay the Tax without causing any resulting economic disadvantage or increase of tax to Administrative Agent, any Lender or Trustee; and (ii) Grantor pays the Tax (including any tax on the payment made) within 30 days after notice from Administrative Agent that the tax law has been enacted.

### **10.5 Reconveyance**

Upon payment of all Secured Obligations, Administrative Agent shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing the Secured Obligations to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property, including attorneys' fees.

### **10.6 Successor Trustee**

In accordance with applicable law, Administrative Agent may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

### **10.7 Administrative Agent's Powers**

Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Administrative Agent's rights or remedies, Administrative Agent, at its option, may extend the time for payment of the Secured Obligations or any part thereof, reduce payment thereon, release anyone liable thereon, accept a renewal note or notes therefor, modify the terms and time of payment thereof, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof.

Grantor shall pay Administrative Agent a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Administrative Agent's option, for any such action if taken at Grantor's request.

### **10.8 Subdivision**

Grantor hereby consents to a subdivision of the Property, if Administrative Agent, in its sole discretion, determines that a subdivision of the Property is necessary or desirable to preserve the lien of this Deed of Trust, or to permit Administrative Agent to foreclose on only a portion of the Property.

### **10.9 Subrogation**

Administrative Agent shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

#### **10.10 Limitation on Interest and Charges**

The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, the interest, fee or charge shall be reduced by the excess and any excess amounts already collected from Borrower shall be refunded. Administrative Agent may refund such excess either by treating the excess as a prepayment of principal under the Note or by making a direct payment to Borrower. If Administrative Agent elects to treat the excess as a prepayment of principal, Borrower shall not be obligated to pay any prepayment premium required under the Loan Agreement. The provisions of this Section shall control over any inconsistent provision in the Loan Documents.

#### **10.11 Additional Documents; Power of Attorney**

Grantor, from time to time, shall execute, acknowledge and deliver to Administrative Agent upon request, and hereby irrevocably appoints Administrative Agent its attorney-in-fact, exercisable upon and during the continuance of an Event of Default, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Administrative Agent, as Administrative Agent may request in order to perfect, preserve, continue, extend in time or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Grantor shall pay to Administrative Agent upon request therefor all attorney's fees and other costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

#### **10.12 Waiver of Statute of Limitations**

To the full extent Grantor may do so, Grantor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Loan Agreement, the Note or any other obligation secured by this Deed of Trust.

#### **10.13 Forbearance by Administrative Agent Not a Waiver**

Any forbearance by Administrative Agent in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Administrative Agent of any particular default shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Administrative Agent of payment of any of the Secured Obligations after the due date thereof shall not be a waiver of Administrative Agent's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Administrative Agent shall not be a waiver of Administrative Agent's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Administrative Agent's receipt of any awards, proceeds or damages under Sections 2.3 and 2.7 operate to cure or waive Grantor's default in payment of the Secured Obligations.

**10.14 Entire Agreement; Modifications and Waivers**

This Deed of Trust, together with the other Loan Documents, constitutes the entire understanding and agreement of Grantor and Administrative Agent with respect to the Loan. The Loan Documents supercede all prior negotiations, discussions, and agreements with respect to the Loan, may not be contradicted by evidence of any alleged oral agreement, and may not be waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**10.15 Notice**

Any notice to Grantor under this Deed of Trust shall be to the address noted above or such other address as may be designated by Grantor in writing and shall be deemed to have been given on the date delivered in the case of personal delivery or, if mailed, three days after the postmark thereof.

**10.16 Governing Law; Severability; Captions**

Except to the extent that the federal laws of the United States of America provide Administrative Agent with greater rights or remedies, this Deed of Trust shall be governed by the laws of the state of Washington. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and Sections of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**10.17 Definitions**

As used herein: the term "Grantor" means Grantor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "Trustee" means the Trustee herein named, together with any successor Trustee; and the term "Administrative Agent" means Administrative Agent herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

**10.18 Successors and Assigns; Agents**

This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4. In exercising any rights hereunder or taking actions provided for herein, Administrative Agent and Trustee may act through their respective employees, agents or independent contractors as authorized by Administrative Agent and Trustee.

**10.19 Number; Gender**

This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

**10.20 Time**

Time is of the essence in connection with all obligations of Grantor herein.

**10.21 Request for Notice**

Grantor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

**10.22 Assignment of Loan Documents**

Administrative Agent may assign the Loan Documents in whole or in part. Administrative Agent may make available to any proposed assignee or participant all credit and financial data with respect to Grantor and any guarantor as may be in the possession of Administrative Agent. Grantor agrees to provide any additional information that any proposed assignee or participant may reasonably request.

**10.23 Estoppel Certificate**

Grantor shall, within ten days after receipt of Administrative Agent's written request, furnish Administrative Agent or any other party designated by Administrative Agent with a written statement, duly acknowledged, setting forth the amount of the Secured Obligations and otherwise confirming the status of the Secured Obligations, the Property and the Loan Documents.

**10.24 Certain Obligations Unsecured**

Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Indemnity Agreement, (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement, and (c) any obligations under any guaranty of Borrower's or Grantor's obligations under the Loan Documents. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall, in itself, impair or limit Administrative Agent's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

**10.25 Jury Waiver**

GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM MAY, AT ADMINISTRATIVE AGENT'S ELECTION, BE DECIDED BY TRIAL WITHOUT A JURY AND THAT ADMINISTRATIVE AGENT MAY FILE AN ORIGINAL COUNTERPART OR COPY OF

THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.

#### 10.26 Third Party Grantor

(a) Grantor represents and warrants to Administrative Agent that: (i) this Deed of Trust is executed at Borrower's request; (ii) this Deed of Trust complies with all agreements between Grantor and Borrower regarding Grantor's execution hereof; (iii) Administrative Agent has made no representation to Grantor as to the creditworthiness of Borrower; and (iv) Grantor has established adequate means of obtaining from Borrower on a continuing basis financial and other information pertaining to Borrower's financial condition. Grantor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Grantor's risks hereunder. Grantor further agrees that Administrative Agent shall have no obligation to disclose to Grantor any information or material about Borrower which is acquired by Administrative Agent in any manner. The liability of Grantor hereunder shall be reinstated and revived, and the rights of Administrative Agent shall continue if and to the extent that for any reason any amount at any time paid on account of any Secured Obligation is rescinded or must otherwise be restored by Administrative Agent, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Administrative Agent in its sole discretion; provided however, that if Administrative Agent chooses to contest any such matter at the request of Grantor, Grantor agrees to indemnify and hold Administrative Agent and Lenders harmless from and against all costs and expenses, including all fees described in Section 11.3 of the Loan Agreement, expended or incurred by Administrative Agent or Lenders in connection therewith, including without limitation, in any litigation with respect thereto.

(b) (i) Grantor waives any right to require Administrative Agent to: (A) proceed against Borrower or any other person; (B) marshal assets or proceed against or exhaust any security held from Borrower or any other person; (C) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from Borrower or any other person; (D) take any action or pursue any other remedy in Administrative Agent's power; or (E) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Administrative Agent as security for or which constitute in whole or in part the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Grantor waives any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of Borrower or any other person; (B) the cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of Borrower which is a corporation, partnership or other type of entity, or any defect in the formation of Borrower; (D) the application by Borrower of the proceeds of any Secured Obligation for purposes other than the purposes represented by Borrower to, or intended or understood by, Administrative Agent or Grantor; (E) any act or omission by Administrative Agent which directly or indirectly results in or aids the discharge of Borrower or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Administrative Agent against Borrower; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or

maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Administrative Agent give any notice of acceptance of this Deed of Trust. Until all Secured Obligations shall have been paid in full, Grantor shall not have any right of subrogation, and Grantor waives any right to enforce any remedy which Administrative Agent now has or may hereafter have against Borrower or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Administrative Agent. Grantor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Administrative Agent, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys Grantor's rights of subrogation or Grantor's rights to proceed against Borrower for reimbursement; or (2) any loss of rights Grantor may suffer by reason of any rights, powers or remedies of Borrower in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging Borrower's obligations, whether by operation of RCW 61.24.100 as from time to time amended, or otherwise, including any rights Grantor may have to a fair market value hearing to determine the size of a deficiency following any trustee's foreclosure sale or other disposition of any security for any portion of the Secured Obligations.

(iii) If any of said waivers is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent permitted by applicable law or public policy.

#### **10.27 Deed of Trust Act**

It is the express intent of Grantor and Administrative Agent, as beneficiary, that this instrument constitute and be effective as a deed of trust under Revised Code of Washington chapter 61.24 (the "Deed of Trust Act"). Notwithstanding the express intent of Grantor and Administrative Agent that this instrument constitute and be effective as a deed of trust under the Deed of Trust Act, should a court of competent jurisdiction determine that this instrument does not constitute or is not effective as such a deed of trust, then this instrument shall be deemed to be a mortgage under Revised Code of Washington chapter 61.12 (the "Mortgage Statute"). In furtherance of the foregoing, Grantor, as mortgagor, hereby mortgages to Administrative Agent, as mortgagee, the mortgaged Property to secure the prompt payment and performance of the Secured Obligations, subject to the terms and provisions of this instrument and the Mortgage Statute and Administrative Agent will be entitled to exercise the rights and remedies afforded to Trustee in this instrument. Subject to the foregoing, nothing in this Section 10.27 is intended to have any effect on the characterization, or limit the enforceability, of this instrument as a deed of trust under the Deed of Trust Act or the rights and remedies of Trustee or Beneficiary hereunder or thereunder.

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

[Remainder of page intentionally left blank;  
signature page follows]





**EXHIBIT A  
to Deed of Trust**

**LEGAL DESCRIPTION**

1919, 2021, 2217 Market Street, Mt. Vernon, Skagit County, Washington 98273

Those portions of the Northeast Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian, also being portions of Lots 3A, 3B, and 3C of that certain Plat of City of Mount Vernon Binding Site Plan No. MV 1-94 BSP, recorded in Volume 11 of Short Plats, pages 77 through 81, under Auditor's File No. 9405310129, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the East Quarter corner of Section 18 as shown on said plat;  
Thence along the East-West centerline of Section 18, South 90°00'00" West, 1,332.45 feet to the East center 1/16th corner;  
Thence along the North-South centerline of the Northeast Quarter of Section 18, North 00°20'56" West 1,657.73 feet to the North line of the South 330 feet of the Northeast Quarter of the Northeast Quarter of Section 18, said point being the true point of beginning and the Northwest corner of Lot 3C of City of Mount Vernon Binding Site Plan No. MV 1-94 BSP;

Thence along the boundaries of Lot 3C the following courses: South 89°50'52" East 660.91 feet;  
Thence South 00°24'07" East 124.90 feet to the Westerly line of Market Street;  
Thence along the Westerly line of Market Street South 35°08'11" West 87.55 feet to a point of curvature; Thence Southerly 101.79 feet along the arc of a 210.00 foot radius curve, concave to Southeast, through a central angle of 27°46'18";  
Thence leaving said Westerly line North 90°00'00" West 573.09 feet to the Easterly right-of-way of Interstate highway 5, being also the Northwest corner of Lot 3B of City of Mount Vernon Binding Site Plan No. MV 1-94 BSP;  
Thence along said Easterly said right-of-way North 00°20'56" West to the point of beginning;

ALSO beginning at the Northwest corner of Lot 3B described above, said point being the true point of beginning of Lot 3B;  
Thence along the boundaries of said Lot 3B the following courses: South 90°00'00" East 573.09 feet to the West line of Market Street;  
Thence along the West line of Market Street Southerly 28.47 feet along the arc of a 210.00 foot radius curve, concave to the East with a radial bearing of South 82°38'07" East, through a central angle of 07°46'00" to a point of tangency;  
Thence South 00°24'07" East 303.20 feet;  
Thence leaving said Westerly line of Market Street North 90°00'00" West 562.72 feet to the Easterly right-of-way of Interstate Highway 5, being also the Northwest corner of Lot 3A of City of Mount Vernon Binding Site Plan No. MV 1-94 BSP;  
Thence along said Easterly right-of-way North 09°48'40" West 53.25 feet to an angle point; Thence North 00°20'56" West 279.13 feet to the point of beginning;

ALSO beginning at the Northwest corner of Lot 3A described above, said point being the true point of beginning of Lot 3A;  
Thence along the boundaries of said Lot 3A the following courses: South 90°00'00" East 562.72 feet to the West line of Market Street;  
Thence along the West line of Market Street South 00°24'07" East 353.93 feet;  
Thence leaving said West line of Market Street North 90°00'00" West 504.00 feet to the Easterly right-of-way of Interstate Highway 5;  
Thence along said Easterly right-of-way North 09°48'40" West 359.17 feet to the point of beginning;

EXCEPT that portion of Lot 3A, City of Mount Vernon Binding Site Plan No. MV 1-94 BSP, described as follows:

Beginning at the Southeast corner of said Lot 3A;  
Thence West 504.00 feet along the South line thereof to the Westerly line of said Lot 3A; Thence North 09°48'40" West 36.04 feet along said Westerly line;  
Thence South 89°50'52" East 207.04 feet;  
Thence South 00°09'08" West 5.00 feet;  
Thence South 89°50'52" East 214.76 feet;  
Thence North 00°09'08" East 40.35 feet;  
Thence North 89°56'35" East 87.76 feet to the East line of said Lot 3A;  
Thence South 00°24'07" East 69.83 feet along said East line to the point of beginning.

Situated in Skagit County, Washington.

2112 S 1<sup>st</sup> Street, Yakima, Yakima County, Washington 98903

Lot 1 of Survey recorded November 2, 2018, under Auditor's File Number 7997779, records of Yakima County, Washington.

Situated in Yakima County, State of Washington.

1425 Supermall Way, Auburn, King County, Washington 98001

PARCEL A:

THOSE PORTIONS OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, AND OF LOTS 29, 30 AND 38 OF AUBURN "400" CORPORATE PARK DIVISION I, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 128 OF PLATS, PAGES 97 THROUGH 99, INCLUSIVE, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 29;  
THENCE SOUTH 01°21'50" EAST 317.87 FEET ALONG THE WEST LINE THEREOF TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 314.54 FEET (A RADIAL LINE THROUGH SAID BEGINNING BEARS SOUTH 59°06'31" EAST);  
THENCE NORTHEASTERLY AND NORTHERLY 144.87 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°23'19" TO A RADIAL LINE OF SAID CURVE WHICH BEARS SOUTH 85°29'50" EAST AND THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTHERLY 32.21 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°52'00" TO A POINT OF TANGENCY ON THE EAST LINE OF THE WEST 48.54 FEET OF SAID LOT 29;  
THENCE NORTH 01°21'50" WEST 474.21 FEET ALONG SAID EAST LINE AND ITS NORTHERLY PROLONGATION;  
THENCE NORTH 04°07'11" EAST 10.05 FEET;  
THENCE NORTH 01°21'50" WEST 65.68 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 284.50 FEET;  
THENCE NORTHERLY AND NORTHEASTERLY 302.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°59'07";  
THENCE NON-TANGENT TO THE PRECEDING CURVE NORTH 67°57'12" EAST 42.52 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 281.50 FEET (A RADIAL LINE THROUGH SAID BEGINNING BEARS NORTH 21°47'03" WEST);  
THENCE EASTERLY 100.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°25'13";  
THENCE NORTH 88°38'10" EAST 194.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 39.50 FEET;  
THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY 62.59 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°46'54" TO A POINT OF TANGENCY ON THE WEST LINE OF THE EAST 30.50 FEET OF SAID NORTHEAST QUARTER OF SECTION 23;  
THENCE NORTH 89°25'04" EAST 0.50 FEET TO THE WEST LINE OF THE EAST 30.00 FEET OF SAID NORTHEAST QUARTER OF SECTION 23;  
THENCE SOUTH 00°34'56" EAST 350.47 FEET ALONG LAST SAID WEST LINE; THENCE SOUTH 00°51'00" WEST 108.05 FEET;

THENCE SOUTH 03°27'08" WEST 132.18 FEET TO THE WEST LINE OF THE EAST 42.00 FEET OF SAID NORTHEAST QUARTER OF SECTION 23;

THENCE SOUTH 00°34'56" EAST 81.21 FEET ALONG LAST SAID WEST LINE TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE SOUTHERLY, SOUTHWESTERLY AND WESTERLY 77.30 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°34'26" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 124.00 FEET;

THENCE WESTERLY AND SOUTHWESTERLY 98.94 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°43'06";

THENCE SOUTH 42°16'24" WEST 52.36 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE SOUTHWESTERLY AND WESTERLY 41.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°08'40";

THENCE SOUTH 89°25'04" WEST 213.28 FEET;

THENCE SOUTH 01°21'50" EAST 15.00 FEET TO A POINT WHICH BEARS NORTH 89°25'04" EAST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89°25'04" WEST 76.65 FEET TO THE TRUE POINT OF BEGINNING.

(ALSO BEING KNOWN AS LOT 3, CITY OF AUBURN LOT LINE ADJUSTMENT NO. 0006-94, RECORDED UNDER RECORDING NUMBER 9501100685.)

**PARCEL B:**

AN EASEMENT FOR INGRESS AND EGRESS, AS DESCRIBED IN INSTRUMENT ENTITLED "DECLARATION OF RECIPROCAL EASEMENTS AND CONSTRUCTION AND OPERATION RESTRICTIONS", RECORDED ON JANUARY 10, 1995 UNDER KING COUNTY RECORDING NUMBER 9501100698.

260 Highline Drive, East Wenatchee, Douglas County, Washington 98802

A portion of Lots 16 and 17, East Wenatchee Land Company's Plat of Section 14, Township 22 North, Range 20, East of the Willamette Meridian, according to the plat thereof recorded in Volume A of Plats, Page 192, Douglas County, Washington, more particularly described as follows:

Basis of bearing being Washington Grid, North Zone, Distance Being Ground; commencing at the Southeast corner of said Lot 16, a rebar marked NWG LS 38982, being 20 feet West of centerline of county road known as Highline Drive, according to that survey recorded in Book 22/20 Page 267, under Auditor's File No. 3079236, records of Douglas County, Washington.

Thence South 0°53'23" East a distance of 138.01 feet to the North right of way line of Second Street; thence North 89°37'11" West along said North right of way a distance of 241.97 feet to the True Point of Beginning; thence continuing North 89°37'11" West a distance of 401.10 feet to the Southeast corner Lot 1, Block 1, Hayen Subdivision, recorded in Volume C of Plats, Page 29 "A" of said county records; thence North 0°52'50" West a distance of 138.79 feet to a found wire in concrete monument at the Northeast corner of said Lot 1; thence North 0°53'23" West a distance of 330.98 feet; thence South 89°34'43" East 0.77 feet to a found iron pipe in concrete at the Southwest corner of Saddle View Tracts, according to the plat thereof recorded in Volume 8 of Plats, Page 37, of said county records; thence South 89°34'43" East along the South line of said Saddle View Tracts, a distance of 314.94 feet; thence South 0°22'49" West a distance of 97.42 feet; thence South 89°35'34" East a distance of 71.00 feet; thence South 0°21'51" West a distance of 301.97 feet; thence South 89°38'03" East a distance of 24.70 feet; thence South 0°22'49" West a distance of 70.00 feet to the True Point of Beginning.

Also known as Parcel B according to the Boundary Line Adjustment recorded January 23, 2006 under Douglas County Auditor's Filing Number 3094038.

**EXHIBIT B  
to Deed of Trust**

**PERMITTED EXCEPTIONS**

“Permitted Exceptions” means the specific items and exceptions set forth in the ALTA Lender’s Policy of Insurance issued by Fidelity National Title Insurance Company of Washington under Order No. [ ] in favor of U.S. Bank National Association, as Administrative Agent, insuring the lien of the Deed of Trust encumbering real property located at the following addresses:

- 1425 Supermall Way, Auburn, WA 98001
- 2112 S. 1<sup>st</sup> Street, Yakima, WA 98903
- 260 Highline Drive, East Wenatchee, WA 98802
- 1919, 2021, 2217 Market Street, Mount Vernon, WA 98273

**EXHIBIT C  
to Deed of Trust**

**CERTAIN DEFINED TERMS**

As used herein:

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Excluded Swap Obligation” means any Swap Obligation if, and only to the extent that, all or a portion of the grant by Grantor of a security interest to secure, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), including by virtue of Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Swap Counterparty” means, with respect to any swap with U.S. Bank National Association or any Lender, any person or entity that is or becomes a party to such swap.

“Swap Obligation” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act between U.S. Bank National Association or any Lender and one or more Swap Counterparties