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CHICAGO TITLE
620013454

DEED OF TRUST
(with Fixture Filing)
(Washington)

Grantor: Spruce Street, LLC
Grantee: Washington Trust Bank
Trustee: Chicago Title Insurance Company

Legal Description:

Portion of Blocks 3, 4, 6-9/ Albertson's Addition/ Volume 4/ page 1/ records of Skagit County, Washington.

Complete legal description on page ²⁶24 (Exhibit A)

Assessors Tax Parcel No.: P72436 and 4078-009-011-0007 A

This Deed of Trust is a Security Agreement and Financing Statement under Article 9 of the Uniform Commercial Code, with Grantor/Trustor as Debtor and Grantee/Beneficiary as Secured Party

THIS DEED OF TRUST (WITH FIXTURE FILING) ("**Deed of Trust**") dated this ^{Sept} 24th day of August, 2011, is made by and among SPRUCE STREET, LLC, a Washington limited liability company (the "**Grantor**"), whose address is 4300 S. 104th Place, Seattle, WA 98178; CHICAGO TITLE INSURANCE COMPANY (the "**Trustee**"), whose address is 425 Commercial, Mount Vernon, WA 98273; and

Washington Trust Bank (the "**Beneficiary**"), whose address is 10500 NE 8th Street, Suite 1100, Bellevue WA 98004.

**ARTICLE 1
GRANT IN TRUST AND SECURED OBLIGATIONS**

1.1 Grant in Trust. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 for the benefit of Beneficiary, Grantor hereby irrevocably and unconditionally grants, transfers, bargains, conveys and assigns to Trustee, in trust, with power of sale and right of entry and possession, and grants a security interest in, all estate, right, title and interest that Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Collateral**"), which Collateral is not used principally or primarily for agricultural or farming purposes:

1.1.1 Land, Appurtenances, Easements. That certain real property and all interests therein located in Skagit County, Washington, more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference, together with all existing and future easements, access rights, appurtenances, privileges, licenses, hereditaments, franchises and tenements, including all minerals, oil, gas, and other commercially valuable substances that may be in, under or produced from any part of it (collectively, the "**Land**");

1.1.2 Improvements. All buildings, structures, and improvements now located or later to be constructed on the Land (the "**Improvements**");

1.1.3 Related Real Property and Improvements. All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not, that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;

1.1.4 Leases and Licenses. All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, and concessions ("**Leases**") relating to the use and enjoyment of all or any part of the Project (defined below), and any and all deposits, guaranties and other agreements relating to or made in connection with any of the Leases;

1.1.5 Fixtures, Etc. All fixtures, now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Project, whether stored on the Land or elsewhere, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

1.1.6 Construction Materials and Equipment. All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Land or Improvements;

1.1.7 Borrower Funds. All of Borrower's interest in and to the proceeds of the Secured Obligations (defined below), whether disbursed or not; all present and future monetary deposits given by Borrower to any public or private utility with respect to utility services furnished to the Land or Improvements; and all accounts maintained by Borrower with Lender or any subsidiary or affiliate of Lender, including, without limitation, any accounts established in connection with the Secured Obligations;



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1.1.8 Rent, Issues, and Profits. All income, rents, security or similar deposits, revenues, issues, royalties, profits, leases, earnings, products and proceeds of the Land or Improvements, including, without limitation, all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, insurance or condemnation proceeds, payments and deposits, and any proceeds from the sale of any lots comprising the Land and any Units, and any deposits on account thereof (collectively, the **"Rents, Issues and Profits"**);

1.1.9 Contracts and Plans. All construction contracts and subcontracts, consulting agreements, financing commitments and agreements, joint development agreements, service and maintenance agreements, marketing and listing agreements, lot reservation agreements, purchase and sale agreements, and other existing and future contracts relating to the Project, together with all deposits, escrows, payments, or other proceeds thereunder; and all plans and specifications for the construction of the Improvements (the **"Plans"**);

1.1.10 Miscellaneous Personal Property. Any and all personal property of any kind whatsoever, whether tangible or intangible, that is used or will be used in construction of, or is or will be placed upon or is derived from or used in any connection with the use, occupancy or enjoyment of, the Land or Improvements;

1.1.11 Books and Records. All books and records pertaining to any and all of the property described above, including records stored on computer readable media, and a limited sublicense to use the computer hardware or software necessary to access such records (**"Books and Records"**);

1.1.12 Rights Under Condominium Laws. All of Borrower's right, title and interest in and to any and all units, declarant rights, and any other rights relating to the Land or the Improvements, whether now existing or subsequently arising, under any and all laws now existing or later enacted relating to condominiums;

1.1.13 Additional Property. Any additional personal property otherwise set forth herein or listed on any UCC-1 financing statement filed to perfect Lender's security interest hereunder; and

1.1.14 Proceeds. All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

The Land, Improvements, related real property, and all personal property now or hereafter installed on or used in connection with the Land and/or Improvements are collectively referred to herein as the **"Project."** The Project constitutes the bulk of, but not the entirety of, the Collateral.

1.2 Secured Obligations. Borrower makes the grant, conveyance, transfer and assignment set forth in Section 1.1 and grants the security interest set forth in Section 2.1 for the purpose of securing the following Secured Obligations (the **"Secured Obligations"**) in any order of priority that Lender may choose:

1.2.1 Promissory Note. Payment of all Secured Obligations at any time owing under that certain Promissory Note payable by Borrower, as maker, to the order of Lender, executed concurrently herewith (the **"Note"**), evidencing a loan from Lender to Lindal Legacy Realty, LLC, a Washington limited liability Company (the **"Borrower"**) in the principal amount of One Million Four Hundred Thousand and no/100 Dollars (\$1,400,000.00) (the **"Loan"**), together with interest thereon and any modifications, extensions or renewals thereof, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes;



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1.2.2 Loan Documents. Payment and/or performance of each and every other obligation of Borrower under the Note, this Deed of Trust, the Credit Agreement executed in conjunction therewith (the "**Loan Agreement**"), all other documents evidencing, securing, or otherwise governing the Loan (specifically excluding, however, for purposes of establishing the Secured Obligations, any Secured Obligations of Borrower arising solely under any guaranty of the Secured Obligations or any indemnity agreement in the Loan Agreement or otherwise that is not secured hereby (each an "**Independent Indemnity**")), and any and all amendments, modifications, and supplements thereto (the "**Loan Documents**"), the provisions of which are incorporated herein by this reference;

1.2.3 Related Loan Documents. Payment and/or performance of each covenant and obligation to be performed pursuant to any and all loan documents (the "**Related Loan Documents**") that have been or may be executed by Borrower or related entities owned or controlled by, or under common ownership or control with, Borrower, including but limited to Lindal Cedar Homes, Inc., (collectively, the "**Affiliates**") evidencing, securing, or otherwise governing one or more present or future loans by Lender or its affiliates to Borrower or its Affiliates (collectively, the "**Affiliate Loans**"), whether now existing or made in the future, together with any and all modifications, extensions and renewals thereof as further referenced in the Loan Agreement; provided, however, that nothing contained herein shall be construed as imposing an obligation upon Lender, or as evidencing Lender's intention, to make any Related Loan to Borrower; or any Affiliate;

1.2.4 Future Secured Obligations. Payment to Lender of all future advances, indebtedness and further sums and/or performance of such further Secured Obligations as Grantor, Borrower or the then record owner of the Project or the then owner of the balance of the Collateral may undertake to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Lender, its successors or assigns, when such borrowing and/or Secured Obligations are evidenced by a written instrument reciting that it or they are secured by this Deed of Trust; and

1.2.5 Modifications and Amendments. Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Collateral will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

ARTICLE 2 SECURITY AGREEMENT

2.1 Grant of Security Interest. This Deed of Trust creates a lien on the Collateral, and constitutes an absolute assignment of the Rents, Issues and Profits and of the Leases, all in favor of Lender. To the extent that any part of the Collateral or Rents, Issues and Profits and Leases may be, or are determined to be, personal property, Grantor, as debtor, hereby grants to Lender, as secured party, a security interest in such part of the Collateral and Rents, Issues and Profits and Leases as is determined to be personal property, to secure payment and performance of the Secured Obligations. As to such personal property, this Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the state of Washington (the "**Project State**").

2.2 Perfection of Security Interest. Grantor hereby authorizes Lender to file one or more financing statements, continuation statements, financing statement amendments, and such other documents as Lender may from time to time require to perfect and continue the perfection of Lender's security interest in any part of the Collateral or the Rents, Issues and Profits and Leases. Grantor shall pay



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all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing the declaration and the stated intention of the parties hereto that the Collateral and all components thereof are, to the maximum extent possible, real property or otherwise impair the rights or Secured Obligations of the parties under this Deed of Trust.

2.3 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code in effect in the Project State, as amended or modified from time to time, covering any part of the Collateral that now is or later may become fixtures attached to the Land or Improvements.

2.4 Nature of Collateral. Grantor and Lender agree that the filing of a financing statement in the records having to do with personal property shall never be construed as in any way derogating from or impairing the declaration and the stated intention of the parties hereto that the Collateral and all components thereof are, to the maximum extent possible, real property, subject to Lender's right on default to exercise, in any manner permitted by applicable law, those remedies (a) available to Lender under this Deed of Trust, (b) available to Lender as a secured party under the provisions of the UCC, or (c) otherwise provided for by law or available in equity. Whenever Lender's security shall be deemed to include personal property, Lender shall be entitled to foreclose against such property in connection with and as a part of any judicial or nonjudicial proceeding against the real property secured hereby, the parties hereby acknowledging that such foreclosure constitutes a commercially reasonable method of selling such property, or, in Lender's sole discretion and as permitted by applicable law, to pursue any and all other remedies afforded a secured party under the UCC or other applicable law. In case of a default hereunder, Grantor agrees to assemble all such property and make it available to the Trustee or Lender as secured party at a place to be designated by such party that is reasonably convenient to all parties.

ARTICLE 3 ASSIGNMENTS

3.1 Assignment of Rents.

3.1.1 Assignment. Grantor hereby irrevocably, presently, absolutely and unconditionally assigns and transfers to Lender: (a) the Rents, Issues and Profits, whether now due, past due, or to become due, together with the right, power and authority to collect the same, (b) all Leases by or through Grantor or Borrower as lessor, written or oral, now in existence or hereafter arising, and any and all extensions or renewals thereof, together with the right, power and authority of Grantor or Borrower to alter, modify or change the terms thereof or surrender, cancel or terminate the same, and (c) any and all guarantees of any Secured Obligations of any lessee under each of the Leases (a "Lessee"). The assignments in this Section are absolute assignments and irrevocable from Grantor and/or Borrower to Lender and not merely the passing of security interests or assignments for security only.

3.1.2 Grant of License. Lender hereby confers upon Grantor and/or Borrower a license ("License") to collect and retain the Rents, Issues and Profits as they become due and payable, and to administer the Leases, so long as no Event of Default, as defined below, shall exist and be continuing. If an Event of Default has occurred and is continuing, such License shall terminate without notice to or demand upon Grantor or Borrower, without regard to the adequacy of Lender's security under this Deed of Trust.

3.1.3 Collection and Application of Rents, Issues and Profits. Subject to the License granted to Grantor and Borrower under the above Section, Lender has the right, power, and authority to



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collect any and all Rents, Issues and Profits and administer the Leases. Borrower and Grantor hereby appoints Lender its attorney-in-fact, coupled with an interest, to, at such times as Lender may choose in its sole discretion: (a) demand, receive and enforce payment of any and all Rents, Issues and Profits; (b) give receipts, releases and satisfactions for any and all Rents, Issues and Profits; or (c) sue either in the name of Borrower and/or in the name of Lender for any and all Rents, Issues and Profits. Lender's right to the Rents, Issues and Profits does not depend on whether or not Lender takes possession of the Project as permitted hereunder.

3.1.4 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents, Issues and Profits from the Project. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Project, Lender is not and shall not be deemed to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the Secured Obligations of the lessor under any Lease; (c) responsible for any waste committed by Lessees or any other parties, any dangerous or defective condition of the Project, or any negligence in the management, upkeep, repair or control of the Project, or (d) liable in any manner for the Project or the use, occupancy, enjoyment or operation of all or any part of it, except for such matters as may arise from the willful misconduct and bad faith of Lender.

3.1.5 Leasing. Borrower and / or Grantor shall not lease the Project or any part of it unless permitted under the Loan Agreement, and then only strictly in accordance with the Loan Agreement. If any leasing is permitted, Borrower and Grantor shall not accept any deposit or prepayment under any Lease for any rental period exceeding one month without Lender's prior written consent.

3.1.6 Rights of Tenants. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants on the Property.

3.2 Assignment of Permits, Contracts, and Plans. In addition to and without in any way derogating from the security interest granted Lender in the Collateral, Borrower and Grantor hereby assigns, grants, transfers, and sets over unto Lender, Grantor's and/or Borrower's right, title, and interest in, to, and under any and all permits, approvals, commitments, designs, plans, specifications, construction, architectural and engineering contracts, subcontracts, appraisals, listing agreements, and any and all other contracts for work product relating to development or construction on the Property or any part thereof, together with all amendments, modifications, supplements, revisions, and addenda thereto heretofore or hereafter prepared or executed (collectively, the "**Permits, Contracts, and Plans**").

3.2.1 Security for Loan. This assignment is made as additional security for the payment and performance of all of the Secured Obligations.

3.2.2 Liabilities. Lender does not assume any Secured Obligations or duties of Borrower under the Permits, Contracts, and Plans unless and until Borrower shall have been given written notice that Lender is exercising its right to complete or cause the completion of construction on the Property in accordance with the terms of the Loan Documents. If Lender does not directly undertake to complete development or construction of the Property, Lender may assign such Permits, Contracts, and Plans to, and such Secured Obligations and duties of Grantor or Borrower in connection with the Permits, Contracts, and Plans shall be assumed by, the person or entity designated by the Lender for the purpose of completing such development or construction, and Lender shall have no liability whatsoever for the performance of any such Secured Obligations and duties.



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3.2.3 Representations and Warranties of Borrower. Borrower and Grantor represent and warrant to Lender that:

3.2.3.1 No Prior Assignments. Excluding that certain Deed of Trust in which Lindal Cedar Homes, Inc., is the beneficiary and Spruce Street Homes, LLC is the Grantor recorded in Skagit County, Washington under recording number 200810230008, there have been no prior assignments of Grantor's rights, title, and interest in, to, and under the Permits, Contracts, and Plans;

3.2.3.2 Authority. Borrower and Grantor have full power and authority to assign its rights, title, and interest in, to, and under the Permits, Contracts, and Plans to Lender and no consents or approvals of any other person or entities are necessary in order for Grantor or Borrower to validly execute, deliver, and perform this assignment; and

3.2.3.3 No Defaults or Modifications. All covenants, conditions, and agreements set forth in the Permits, Contracts, and Plans have been performed as required as of the date hereof and neither Borrower nor Grantor nor any other party is in default thereunder. Borrower and / or Grantor shall not amend or modify any of the terms and conditions of the Permits, Contracts, and Plans without the prior written approval of Lender, nor shall Borrower or Grantor assign, transfer, mortgage, or otherwise convey or encumber any of its rights, title, or interest in, to, or under the Permits, Contracts, and Plans so long as any of Secured Obligations under the Loan Documents remain unfulfilled.

3.2.4 Attorney-in-Fact. Borrower and Grantor hereby irrevocably constitutes and appoints Lender as its attorney-in-fact, upon the occurrence of any defaults hereunder or under any of the other Loan Documents, to demand, receive, and enforce any and all of Grantor's and Borrower's rights under and with respect to the Permits, Contracts, and Plans, and to perform any and all acts with respect to the Permits, Contracts, and Plans that Lender deems necessary or desirable with the same force and effect as if performed by Borrower or Grantor in the absence of this assignment.

3.2.5 Assignment for Security. This assignment is for security purposes only. Lender shall have no right pursuant to this assignment to enforce Grantor's or Borrower's rights with respect to the Permits, Contracts, and Plans until there is a default under any of the Secured Obligations to Lender pursuant to this Deed of Trust or any of the other Loan Documents. On the occurrence of any such default, Lender, without effecting any of its rights or remedies against Grantor or Borrower under any other instrument, document, or assignment, may exercise its rights under this assignment or in any other manner permitted by applicable law, and in addition, Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the UCC or as otherwise provided by law.

3.2.6 Indemnity. Borrower and Grantor shall indemnify and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, damages, costs and expenses, including, without limitation, attorneys' fees and costs, to which Lender may be exposed or which Lender may incur in exercising any of its rights under this assignment.

ARTICLE 4 RIGHTS AND DUTIES OF THE PARTIES

4.1 Performance of Secured Obligations. Borrower and Grantor shall promptly pay and perform each Obligation in accordance with its terms.

4.2 Representations and Warranties. Borrower and Grantor represent and warrant that, except as previously disclosed and accepted by Lender in writing:



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4.2.1 Title to Land and Improvements. Grantor holds fee simple title to all of the Land and Improvements, subject only to such exceptions and encumbrances as have been approved in writing by Lender (the "**Permitted Exceptions**"), and Grantor has or will have good title to all portions of the Collateral other than the Land and Improvements. The Permitted Exceptions are those exceptions listed on Schedule B, Special Exceptions 1-6 and 10-13, in the title commitment obtained from Chicago Title Company dated July 5, 2011, plus that certain Deed of Trust in which Lindal Cedar Homes, Inc., is the beneficiary and Spruce Street Homes, LLC is the Grantor recorded in Skagit County, Washington under recording number 200810230008, which is being subordinate to this Deed of Trust.

4.2.2 Title to Personal Property. Grantor owns any portion of the Collateral that is personal property free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office other than in Lender's favor.

4.2.3 Right to Encumber/Priority. Grantor has the full and unlimited power, right, and authority to encumber the Collateral and assign the Rents, Issues and Profits and Leases. Upon recording of this Deed of Trust and filing of a UCC Financing Statement with respect to any portion of the Collateral that is determined to be personal property, this Deed of Trust (with Fixture Filing) will create a first and prior lien on the Collateral that is subject and subordinate to no other liens except for the Permitted Exceptions.

4.2.4 Commercial Purposes. The Loan and the other Secured Obligations were obtained by Grantor and will continue to be used for commercial or business purposes, other than agricultural, timber, or grazing purposes, and not for personal, family or household purposes.

4.3 Taxes and Assessments. Grantor and Borrower shall pay or cause to be paid when due, all general real and personal property taxes, special and supplemental real and personal property taxes and assessments, license fees, license taxes, levies, charges, penalties, or other taxes or similar impositions imposed by any public or quasi-public authority or utility company that are or may become a lien upon the Collateral or any portion thereof or interest therein, or that may cause any decrease in the value of the Collateral or any part of it. Grantor and Borrower shall also pay when due all real property taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in the Collateral created hereby. All of the foregoing taxes, assessments and other charges payable by Borrower and Grantor with respect to the Collateral are collectively referred to as the "**Impositions.**" If requested by Lender, Borrower and Grantor shall furnish Lender with receipts from the appropriate taxing authority or other proof satisfactory to Lender that all Impositions have been paid on or before the date upon which they become delinquent.

4.4 Liens, Charges and Encumbrances. Grantor shall not encumber or permit the encumbrance of the Collateral without Lender's prior written consent and Borrower shall immediately discharge any lien on the Collateral to which Lender has not consented in writing. Borrower and Grantor shall pay or cause to be paid when due all Secured Obligations secured by or reducible to liens and encumbrances that shall now or hereafter encumber or appear to encumber the Collateral or any part thereof, all claims for work or labor performed, or materials or supplies furnished, in connection with any work upon the Project, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust; provided, however, that Grantor and Borrower shall not be in default hereunder due to any such lien, charge, or encumbrance that is a Permitted Exception. Lender hereby expressly reserves the right to advance any and all funds necessary to cure any and all such Secured Obligations, and/or claims.

4.5 Required Insurance. Borrower and Grantor shall keep the following insurance coverages in effect with respect to the Collateral:



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4.5.1 Property insurance covering the Property including all Improvements, including earthquake, flood (if the Land is located in a designated flood hazard area) , boiler, mechanical, and machinery insurance, in an amount equal to at least 100 percent of the replacement cost of all improvements. Such insurance shall contain coverage against loss or damage by perils no less broad than the current edition of the ISO Special Form, 1985 Edition. Grantor and Borrower shall be responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses;

4.5.2 Comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Land of the Improvements in amounts and on terms acceptable to the Lender;

4.5.3 Each insurance policy shall be with a company and in a form acceptable to Lender. Each hazard insurance policy shall include a Form 438BFU or equivalent mortgagee endorsement in favor of Lender. Each liability insurance policy shall name Lender as an additional insured. All required policies will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Borrower and Grantor shall furnish to Lender 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. Borrower and Grantor shall promptly furnish to Lender all renewal notices relating to insurance policies. Borrower and Grantor shall pay all premiums on insurance policies directly to the carrier. Prior to the expiration date of each such policy, Borrower and Grantor shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid. As security for the Secured Obligations, Borrower and Grantor hereby assigns to Lender that portion of all required insurance policies pertaining to the Collateral, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

4.6 Insurance and Condemnation Proceeds.

4.6.1 Payment to Lender. Borrower and Grantor hereby absolutely and irrevocably assigns to Lender, and authorizes the payor to pay to Lender, the following claims, causes of action, awards, payments and rights to payment, together with all interest that may accrue thereon (collectively, the "**Claims**"):

4.6.1.1 Condemnation Awards. All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation, or taking for public or private use that affects all or part of the Collateral or any interest in it;

4.6.1.2 Warranty Claims. All awards, claims, and causes of action arising out of any warranty affecting all or any part of the Collateral, or for damage or injury to or decrease in value of all or part of the Collateral or any interest in it; and

4.6.1.3 Insurance Proceeds. All proceeds of any insurance policies payable because of damage or loss sustained to all or part of the Collateral.

4.6.2 Notice to Lender. Borrower and Grantor shall immediately notify Lender in writing if: (i) any damage occurs or any injury or loss is sustained to all or part of the Collateral, whether or not covered by insurance or warranty, or any action or proceeding relating to any such damage, injury, or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, that relates to any actual or proposed condemnation or taking of all or part of the Collateral.



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4.6.3 Pursuit of Claims. Borrower and Grantor shall pursue recovery of all such Claims and defend its rights under any proceeding for condemnation of the Collateral or any part thereof and prosecute the same with due diligence to its final disposition, and shall cause any awards or settlements to be paid over to Lender for disposition pursuant to the terms of this Deed of Trust. Lender may, at Lender's option and in Lender's sole discretion, as attorney-in-fact for Grantor and Borrower, make proof of loss and adjust and compromise any Claims, appear in or prosecute any action or proceeding to enforce the Claims, or participate in any action or proceeding relating to condemnation or taking of all or part of the Collateral, and may join Grantor and / or Borrower in adjusting any loss covered by insurance. Borrower and/or Grantor shall deliver or cause to be delivered to Lender such instruments as may be requested by Lender from time to time to permit Lender to take any such actions.

4.6.4 Application of Proceeds. All proceeds of the Claims that Borrower or Grantor may receive or be entitled to receive shall be paid to Lender. Lender shall apply any proceeds received by it hereunder first to the payment of the reasonable costs and expenses incurred in the collection of the proceeds. Lender shall then apply the remaining balance of such proceeds (the "**Net Claims Proceeds**"), in its absolute discretion and without regard to the adequacy of its security: (i) to any of the Secured Obligations, notwithstanding the fact that Secured Obligations may not be due according to the terms thereof; (ii) to reimburse Grantor or Borrower for the costs of reconstructing the Improvements or otherwise repairing or restoring the Collateral; or (iii) to Borrower and / or Grantor; provided, however, that if there are no outstanding Events of Default under any of the Loan Documents and Borrower or Grantor establishes, to Lender's reasonable satisfaction, that Borrower and Grantor has sufficient funds, including the Net Claims Proceeds, to fully rebuild or repair the Collateral within the remaining term of the Loan and without delaying the completion date of the Project, Lender shall make disbursements of the Net Claims Proceeds for purposes of repair or restoration of the Collateral.

4.6.5 Restoration. If the Net Claims Proceeds are used to reimburse Grantor or Borrower for the cost of reconstruction, restoration, or repair of the Collateral, the Collateral shall be promptly and diligently restored by Grantor and Borrower to the equivalent of its condition immediately prior to the casualty or condemnation in accordance with the Plans or to such other condition as Lender may approve in writing, and disbursements of such Net Claims Proceeds shall be in accordance with disbursement procedures acceptable to Lender. If, after applying the Net Claims Proceeds to the Secured Obligations, Lender reasonably determines the remaining security to be inadequate to secure the remaining Secured Obligations, Borrower and Grantor shall, upon written demand from Lender, repay an amount that will reduce the remaining Secured Obligations to a balance for which adequate security is present.

4.7 Maintenance and Preservation of the Collateral. Borrower and Grantor covenant: (a) to maintain and preserve the Collateral in good condition and repair and in a prudent businesslike manner; (b) not to remove, demolish or structurally alter the Collateral or any part thereof, or alter, restore or add to the Collateral, or initiate or allow any change in any zoning or other land use classification that affects the Collateral or any part of it, except with Lender's express prior written consent, and except such alterations as may be required by laws, ordinances, rules, regulations, or orders of governmental authorities or by the terms hereof; (c) to comply with and not suffer violations of any existing and future subdivision laws, building codes, zoning laws and regulations, and other laws, regulations, ordinances, rules, codes, orders, directives, guidelines, building restrictions and requirements of, and all agreements with and commitments to, all federal, state, county or municipal governmental, judicial or legal authorities or agencies having jurisdiction over the Grantor, Borrower or the Project, including those pertaining to the construction, sale, lease, or financing of the Improvements, and all recorded covenants and restrictions affecting the Project (the "**Requirements**"); (d) not to commit or permit any waste to or deterioration of the Collateral; (e) to perform all other acts that from the character or use of the Collateral may be reasonably necessary to maintain and preserve its value; (f) to perform all Secured Obligations



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required to be performed under the Loan Documents, and all other Secured Obligations of Borrower pertaining to the Collateral; and (g) to execute and, where appropriate, acknowledge and deliver such further instruments as Lender or Trustee may deem necessary or appropriate to preserve, continue, perfect and enjoy the security provided for herein.

4.8 Defense and Notice of Actions; Costs. Borrower and Grantor shall, without liability, cost, or expense to Lender or Trustee, protect, preserve, and defend Grantor's fee interest in and to the Project and Borrower's and/or Grantor's interest in the Collateral, the security of this Deed of Trust, any additional or other security for the Secured Obligations, and the rights or powers of Lender or Trustee hereunder against all adverse claims. Said protection, preservation, and defense shall include, but not be limited to, protection, preservation and defense against all adverse claimants to and encumbrancers of Borrower's or Grantor's interest in the Collateral, whether or not such claimants or encumbrancers assert an interest paramount to that of Lender. Borrower and Grantor shall give Lender and Trustee prompt notice in writing of the filing of any such action or proceeding. Borrower and Grantor shall pay all costs, fees, and expenses including, without limitation, costs of evidence of title, trustees' fees, and reasonable attorneys' fees paid or incurred in any action or proceeding in which Lender and/or Trustee may appear or be made a party, whether or not pursued to final judgment, and in any exercise of the power of sale or other remedy contained herein, whether or not such sale is actually consummated or such other remedy is actually prosecuted to completion.

4.9 Right of Inspection. Lender, its agents, employees and representatives shall have the right to enter the Project at any reasonable time for the purpose of inspecting the Project and ascertaining Borrower's and Grantor's compliance with the terms hereof, and for such other purposes and in accordance with the terms specified in any of the other Loan Documents.

4.10 Actions of Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, becomes a public record as provided by law.

4.10.1 Compensation. Borrower and Grantor agree to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Lender and Trustee when the law provides no maximum limit, for any services that Lender or Trustee may render in connection with this Deed of Trust, including, without limitation, trustees' fees and related recording and other costs for full and partial reconveyances of this Deed of Trust. Borrower and Grantor further agree to pay or reimburse Lender for all costs, expenses and other advances that may be incurred or made by Lender or Trustee in any efforts to enforce any terms of this Deed of Trust, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined below) or bankruptcy proceeding affecting the Borrower, Grantor, or the Collateral, and any cost of evidence of title.

4.10.2 Exculpation. Lender shall not be directly or indirectly liable to Borrower, Grantor, or any other person as a consequence of: (i) Lender's exercise of or failure to exercise any rights, remedies, or powers granted to it in this Deed of Trust or to perform or discharge any obligation or liability of Grantor or Borrower under any agreement related to the Collateral or under this Deed of Trust; or (ii) any loss sustained by Grantor or Borrower or any third party resulting from any act or omission of Lender in managing the Project, unless the loss is caused by the willful misconduct or gross negligence of Lender. Borrower and Grantor hereby expressly waive and release all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Lender.

4.10.3 Indemnification. Borrower and Grantor agree to indemnify Trustee and Lender against and hold each of them and their respective officers, employees, agents, and representatives, harmless from and against any and all losses, damages, liabilities, claims, causes of action, judgments,



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court costs, attorneys' fees, and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses that either may reasonably suffer or incur: (i) in performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law; (ii) because of any failure of Borrower or Grantor to perform any of its Secured Obligations; or (iii) because of any alleged obligation of or undertaking by Lender to perform or discharge any of the representations, warranties, conditions, covenants or other Secured Obligations in any document relating to the Collateral other than the Loan Documents. This agreement by Borrower and Lender to indemnify Trustee and Lender shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

4.10.4 Payment by Borrower and Grantor. Borrower and Grantor shall fulfill all Secured Obligations to pay money arising under this Section immediately upon demand by Trustee or Lender. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the rate applicable to the principal balance of the Note, as such rate may be adjusted.

4.11 Permitted Actions.

4.11.1 Releases, Extensions, Modification, and Additional Security. From time to time, Lender may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation; or (iv) alter, substitute, or release all or any portion of the Collateral.

4.11.2 Powers of Trustee. From time to time when requested to do so by Lender in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person and without affecting the personal liability of any person for payment or performance of any of the Secured Obligations: (i) consent to the making of any plat or map of the Project or any part of it; (ii) join in granting any easement or creating any covenant or restriction affecting the Project; (iii) join in any extension, subordination, or other agreement affecting this Deed of Trust or the lien of it; or (iv) reconvey the Collateral or any part of it without any warranty.

4.12 Partial Reconveyance. Upon Borrower's fulfillment of all of the terms and conditions set forth in the Loan Documents, Lender agrees, at any time upon the written request of Borrower, to direct Trustee to execute and deliver a partial reconveyance releasing from the lien of this Deed of Trust each of the separate subdivision lots that collectively constitute the Land (each lot to be released is hereinafter referred to as a "**Release Unit**") so long as: (i) there does not exist any uncured default under any of the Loan Documents or any event which, following notice and/or the expiration of any applicable cure period without a cure, would constitute a default thereunder, (ii) the Release Unit and the real property remaining subject to the Deed of Trust shall each constitute legal and separately conveyable parcels with reasonable and adequate access to public streets and utilities, in accordance with the Plans, (iii) Lender receives the release price established in the Loan Documents (the "**Release Price**") and all other amounts it is entitled to receive thereunder, and (iv) Borrower pays all trustees' fees and recording and other costs associated with such reconveyance. Except as specifically provided in the Loan Documents, Lender shall not be obligated to reconvey the lien of the Deed of Trust, in whole or in part, until it has received payment in full of all amounts due Lender under any of the Loan Documents. Lender's acceptance of any payment or instruction to the Trustee to issue any partial reconveyance shall not affect Borrower's obligation to repay all amounts that remain owing under the Loan Documents or the security of this Deed of Trust regarding any Collateral that is not reconveyed. If Lender does not require satisfaction of all of the conditions set forth in the Loan Agreement before releasing one or more Release



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Units, that alone shall not be a waiver of such conditions, and Lender reserves the right to require their satisfaction in full before releasing any further Release Units from this Deed of Trust.

4.13 Full Reconveyance. When all of the Secured Obligations have been paid in full and there exists no default under any Related Loan, Lender shall request Trustee in writing to reconvey the Collateral, and shall surrender this Deed of Trust and all notes and instruments evidencing the Secured Obligations to Trustee. When Trustee receives Lender's written request for reconveyance and all reconveyance fees, recording fees, or other fees and expenses owing to it by Borrower hereunder, Trustee shall reconvey the Collateral, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Lender nor Trustee shall have any duty to determine the right of persons claiming to be rightful grantees of any reconveyance.

4.14 Late Charge. If Borrower or Grantor commits an Event of Default in the payment of an amount due and payable under this Deed of Trust, a late charge as specified in and measured by the Note may be charged by Lender for the purpose of defraying the extra administrative expenses incident to handling such delinquent payment and the loss of the use of funds resulting from Borrower's non-payment when due. Such late charge shall be paid without prejudice to the rights of the holder of the Note to collect any other amounts provided to be paid thereunder.

4.15 Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Lender in accordance with this Deed of Trust or with the proceeds of the Loan.

4.16 Notice of Change. Borrower and Grantor shall give Lender prior written notice of any change in: (i) the location of its place of business or its chief executive office if it has more than one place of business; (ii) the location of any of the Collateral, including the Books and Records; and (iii) Borrower's name or business structure. Unless approved by Lender in writing, all Collateral that consists of personal property (other than the Books and Records) will be located at the Project and all Books and Records will be located at Borrower's place of business, or chief executive office if Borrower has more than one place of business.

4.17 Substitution of Trustee. Lender may appoint a successor trustee by an instrument executed and acknowledged by Lender and recorded in the county in which this Deed of Trust is recorded, and upon such recordation the successor trustee shall become vested with the same powers, rights, duties, and authority of the Trustee with the same effect as if originally made Trustee hereunder.

ARTICLE 5 DEFAULTS AND REMEDIES

5.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" (some or all, collectively, "Events of Default"):

5.1.1 Default Under Loan Documents. An Event of Default occurs as defined under the Loan Agreement or any other Loan Document;

5.1.2 Unauthorized Transfer. A transfer, purported transfer, or change of ownership or control of Borrower in violation of the provisions of this Deed of Trust. Transfers excluded from the definition of unauthorized transfer are changes of ownership or control occasioned by death of any member and transfers among existing members and the families of existing members.



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5.1.3 Default Under Related Loan Documents. An Event of Default occurs as defined in and arising under any Related Loan Document, including, but not limited to, the loan agreement or any other agreement entered into therewith.

5.2 Rights and Remedies. At any time after the occurrence of an Event of Default hereunder, Lender and/or Trustee shall have all of the rights and remedies described below, in addition to any other rights and remedies of Lender under the Loan Agreement, the other Loan Documents, or the Related Loan Documents. To the fullest extent permitted by law, all of such rights and remedies shall be cumulative and the exercise of any one or more of them shall not constitute an election of remedies:

5.2.1 Receiver. Without regard to the then-current value of the Collateral or the interest of Borrower or Grantor therein, Lender may apply to any court having jurisdiction to appoint a receiver for the Collateral or any portion thereof, and Borrower and Grantor hereby irrevocably consent to the appointment of a receiver upon such Event of Default. Any such receiver shall have the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents. Employment by Lender shall not disqualify a person from serving as receiver.

5.2.2 Cure; Protection of Security. With or without notice, and without releasing Borrower or Grantor from any obligation hereunder, Lender may (but shall not be obligated to) cure any breach or default of Borrower, and, if it chooses to do so in connection with any such cure, do any and all other things that it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust.

5.2.3 Entry. Lender, in person, by agent, or by court-appointed receiver, with or without bringing any action or proceeding, may terminate Grantor's and/or Borrower's right and license to collect the Rents, Issues and Profits and to administer the Leases, and enter, take possession of, complete construction on, manage and operate, and lease or sell, all or any part of the Collateral, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary or appropriate to protect the security of this Deed of Trust or that are otherwise permitted to be taken or conducted by Lender under the Loan Agreement. If Lender so requests, Borrower and Grantor shall assemble any Collateral that has been removed from the Project and make all of it available to Lender at the Project site. The entering upon and taking possession of the Project, the collection of the Rents, Issues and Profits and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any other right or remedy that Lender may have in response to such default or pursuant to such notice and, notwithstanding the continued possession of the Project or the collection, receipt, and application of the Rents, Issues and Profits by Lender, Trustee, or Lender's receiver or agent, Trustee or Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default.

5.2.4 Uniform Commercial Code Remedies. With respect to all or any part of the Collateral that constitutes personal property, Lender shall have all of, and may exercise any or all of, the rights and remedies of a secured party under the Uniform Commercial Code in effect in the Project State.

5.2.5 Judicial Action. Lender may commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower or Grantor hereunder, and Borrower and Grantor agree that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that Borrower and Grantor waive the defense of laches and any applicable statute of limitations. If this Deed of Trust is foreclosed by judicial action, and the Collateral sold at a foreclosure sale, the



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purchaser may, during any redemption period allowed, make such repairs or alterations on the Land 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 under the Note, 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. In addition, Lender will be entitled to a judgment providing that, if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

5.2.6 Realization on Security. Lender may resort to and realize upon or waive the security hereunder and any other security now or hereafter held by Lender in such order and manner as Trustee and Lender or either of them may, in their sole discretion, determine; which resort to such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

5.2.7 Power of Sale. Lender may execute a written notice of such Event of Default and of its election to invoke this power of sale to cause all or part of the Collateral to be sold to satisfy the Secured Obligations. Under this power of sale, Lender shall have the discretionary right to cause some or all of the Collateral, including any Collateral property that constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

5.2.7.1 Sales of Personal Property. For purposes of this power of sale, Lender may elect to treat as personal property any Collateral property that is intangible or that can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property separately from the sale of real property, in any manner permitted by the Uniform Commercial Code in effect in the Project State, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

5.2.7.2 Trustee's Sales of Real Property or Mixed Collateral. Lender may also choose to dispose of some or all of the Collateral that consists solely of real property in any manner then permitted by applicable law. In its discretion, Lender may also or alternatively choose to dispose of some or all of the Collateral in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, if and as permitted in the Project State. Borrower and Grantor agree that such a sale of personal property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together, will sometimes be referred to as a "Trustee's Sale".

5.2.7.3 Trustee's Sale Procedures. Before any Trustee's Sale, Lender or Trustee shall give and record such notice of default and election to sell as may then be required by law. When all legally mandated time periods have elapsed, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale, and Lender may impose such terms and conditions of sale as are permitted or allowed by applicable law. From time to time in accordance with then applicable law, Trustee may, and in any event at Lender's request shall, continue any Trustee's Sale by public announcement at the time and place scheduled for that sale, or may, in its discretion, give a new notice of sale. Also, Lender may from time to time discontinue or rescind any notice of default or notice of sale before any Trustee's Sale as provided above, by executing and delivering to Trustee a written notice of such discontinuance or rescission. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Lender to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the Secured Obligations, nor otherwise affect any provision, covenant, or condition of



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any Loan Document or Related Loan Documents, or any of the rights, Secured Obligations, or remedies of Trustee or Lender hereunder or thereunder.

5.2.7.4 Bidding at Trustee's Sale. At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, unless other terms and conditions of sale are prescribed by Lender in accordance with and as permitted by applicable law. Any person, including, without limitation, Borrower, Grantor, or Lender, may purchase at such sale, and Borrower and Grantor hereby covenant to warrant and defend the title of such purchaser or purchasers. Trustee shall execute and deliver to the purchaser(s) at such sale a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness.

5.2.8 Single or Multiple Foreclosure Sales. If the Collateral consists of more than one lot, parcel or item of property, Lender may: (i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted herein, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions, each of which may be separately noticed if so elected by Lender and permitted by applicable law; or in any other manner Lender may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"). If it chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and places and in such order as it may deem to be in its best interests, all as may be permitted under applicable law. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Collateral that has not been sold until all of the Secured Obligations have been paid in full.

5.2.9 Determination of Fair Value. To the extent applicable law requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Borrower, Grantor, or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

5.2.9.1 The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

5.2.9.2 An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including but not limited to brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

Borrower and Grantor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

5.2.10 Repairs During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Property is 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



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thereon from the time of such expenditure at Default Rate shall be added to and become a part of the amount required to be paid for redemption from such sale.

5.2.11 Releases, Extensions, Modification and Additional Security. Without affecting the liability of any person for payment of any of the Secured Obligations, Lender may make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any of the Secured Obligations, and accept additional security or release all or a portion of the Collateral and/or other security for the Secured Obligations.

5.2.12 Acceleration Not Required. Lender may take any of the actions permitted under Sections 5.2.1 and/or 5.2.3 regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

5.3 Payment of Costs, Expenses, and Attorneys' Fees. All costs and expenses reasonably incurred by Trustee and Lender in enforcing the remedies available to them hereunder or otherwise protecting Lender's rights or interests (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, expenses for evidence of title, appraisals and surveys and trustees' fees, and costs and fees relating to any bankruptcy, reorganization, or insolvency proceeding) shall constitute an additional obligation of Grantor and Borrower to Lender and bear interest at the Default Rate of Interest from the date of expenditure until said sums have been paid.

5.4 Remedies Not Exclusive. Trustee and/or Lender shall be entitled to enforce the payment and performance of any Secured Obligations and to exercise any and all rights and powers under this Deed of Trust, any other Loan Document, or any Related Loan Document, notwithstanding the fact that some or all of the Secured Obligations may now or hereafter be otherwise secured. Trustee and/or Lender shall be entitled to enforce all such rights concurrently or separately, in such order and manner as they or either of them may in their absolute discretion determine. No remedy is intended to be exclusive of any other remedy, but each shall be cumulative and in addition to the others, to the fullest extent permitted by law.

ARTICLE 6 ASSIGNMENT

6.1 No Assignment or Encumbrance by Grantor or Borrower Without Lender's Consent. Borrower and Grantor acknowledge and agree that the Secured Obligations are personal to Borrower and Grantor and that the identity of Borrower, Grantor, and its partners and employees, and of any guarantors, and the relationship between Borrower, Grantor, and Lender, Borrower's and Grantor's creditworthiness, business expertise, financial condition, and continued control of the Collateral were material inducements upon which Lender relied in arranging the Secured Obligations. Accordingly, Borrower and Lender shall not, without Lender's prior written consent or as otherwise expressly permitted in this Agreement: (i) sell, convey, assign, encumber, or otherwise transfer any of its right, title, or interest in and to the Collateral or any other Project asset, whether such transfer or encumbrance is voluntary or by operation of law, other than as specifically permitted under the Loan Documents, (ii) sell, assign, or transfer its interest as borrower under the Secured Obligations, or (iii) transfer any stock or other ownership interest that would cause a material change in the control of Borrower or Grantor (excluding, however, (a) transfers of the interests of limited partners or non-managing members of Borrower or Grantor if such transfers do not materially diminish the powers of the general partner or manager of Borrower or Grantor or otherwise cause a material change in the rights to manage and control Borrower or Grantor, or (b) changes of ownership or control occasioned by death of any member and transfers among existing members and the families of existing members). Any attempted assignment without such prior written consent shall be null and void, and of no effect, and shall also constitute, at



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Lender's option, an Event of Default by Borrower or Grantor under this Agreement. Transfers of a deceased shareholder's shares, required as a result of the death of the shareholder, are excluded from this assignment limitation

6.2 Conditions to Approval of Assignment. As a condition of approving any assignment, Lender may impose such requirements and conditions as it determines are appropriate in its sole discretion, including but not limited to the requirement that Borrower, Grantor, and the assuming party pay, in advance, any and all reasonable costs and expenses, including reasonable attorney's and accountant's fees, incurred by the Lender in connection therewith. No approval of any assignment shall cause a release of Borrower or Grantor from any liability under the Loan Documents without Lender's prior written consent, which consent may be freely withheld.

6.3 Loan Due upon Prohibited Transfer or Encumbrance. Upon any transfer, assignment, or encumbrance, as described in Section 6.1 for which Lender's written approval is required but has not been obtained, the entire outstanding balance owing under the Note, including principal, accrued interest, and any other amounts owing under the Loan Documents shall become due and payable at Lender's option, without any requirement for notice or demand, and Lender may pursue any remedies granted to it under this Deed of Trust or any of the other Loan Documents.

ARTICLE 7 RIGHTS UNDER CONDOMINIUM LAWS

This Deed of Trust shall include the following rights in connection with any condominium project to be developed on the Land:

7.1 Security Interest in Rights Under Condominium Laws. This Deed of Trust and Lender's security interest hereunder shall extend to all of Borrower's right, title and interest in and to any and all units, common elements, development rights, declarant rights and any other rights of Borrower or Grantor in the Project now existing or subsequently arising under all laws now existing or later enacted relating to condominiums (together the "Condominium Laws").

7.2 Representations and Warranties. Borrower and Grantor hereby represent, warrant, and agree:

7.2.1 Not to file, record or amend any condominium declaration in connection with the Project without the prior written consent of Lender, which consent Lender shall not unreasonably withhold;

7.2.2 To take those steps necessary to ensure that the condominium declaration filed in connection with the Project complies with Legal Requirements of the Fannie Mae Selling Guide as established by the Federal National Mortgage Association and any similar requirements imposed by the Federal Home Loan Mortgage Corporation;

7.2.3 To make all payments required and to observe and perform all terms and conditions to be performed by Borrower or Grantor under all documents by which the condominium is constituted and/or governed and all other documents required to be executed by declarant pursuant to the Condominium Laws;

7.2.4 To comply with all of its Secured Obligations as a unit owner under the Condominium Laws; and



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7.2.5 To pay all charges, including all common expenses liabilities and assessments (special or general), insurance, taxes and other items Borrower or Grantor is or may later be responsible for paying under the condominium documents as the same may be recorded and/or amended, and under the Condominium Laws.

7.3 Proxy. Until such time as this Deed of Trust is reconveyed of record as herein provided, Borrower and Grantor pledge to Lender its vote and constitute Lender as Borrower's and Grantor's proxy (which appointment is coupled with an interest) with sole right to vote upon:

7.3.1 any partition of all or any portion of the Land subject to the condominium declaration;

7.3.2 the nature and amount of any insurance with respect to any such property and disposition of any proceeds thereof;

7.3.3 the manner in which any condemnation or threat thereof shall be defended or settled;

7.3.4 determination as to whether or not to restore or rebuild any portion of the improvements located on the Land;

7.3.5 assessment of any expenses other than routine periodic assessments;

7.3.6 removal of all or any portion of the Land or Improvements from the provisions of the Condominium Laws; and

7.3.7 any modifications, amendments, extensions, renewals, cancellations, transfers or encumbrances of any unit that is part of the Project by deed, lease or other instrument.

7.4 Authorized Representative. Lender is hereby appointed Borrower's and Grantor's authorized representative (which appointment is coupled with an interest) for the inspection of books and records as provided in the condominium declaration and/or bylaws, said appointment to be irrevocable until such time as this Deed of Trust is reconveyed of record as herein provided.

7.5 Notices, Etc. Borrower and Grantor will provide, upon request of Lender, true and correct copies of:

7.5.1 any notices to the owners of the condominium units, including, but not limited to, any notices of any meetings of the owners of the condominium units;

7.5.2 minutes of any meetings;

7.5.3 any statement of financial condition of the condominium owners' association including any budgets or proposed budgets as available to any owner;

7.5.4 any statement showing allocation of proportional occupancy, expenses and assessments issued to Borrower;

7.5.5 any notice of default issued to Borrower or Grantor; and



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7.5.6 any amendment or proposed amendment to the condominium declaration, bylaws, or other condominium documents.

7.6 Payment of Common Expenses. Unless prohibited by law, Lender or Trustee, either prior to, contemporaneously with, or subsequent to the foreclosure of this Deed of Trust, or while pending the expiration of any applicable redemption period subsequent to a judicial foreclosure and sale upon execution of the Project, may pay common expenses for which Lender may be liable, and subsequent to such payments Lender shall have a lien without merger on the Project for the amount paid of the same priority as the lien of this Deed of Trust, or if subsequent to sale or execution, said lien shall be prior to any lien held by any redemptioner as defined by law. In the event the Lender is the successful bidder at any sale upon execution subsequent to a judicial foreclosure and obtains possessory rights to the Collateral subject to redemption by the judgment debtor or redemption as defined by law, any payments made by the Lender or its successor in interest to satisfy condominium assessments levied and payable during the redemption period shall, in the event of any redemption, be recoverable by the Lender from the judgment debtor or its successors in interest, or any redemptioner in the same manner as any other assessment or tax would be recoverable.

7.7 Condominium Insurance. The insurance provisions of this Deed of Trust shall be deemed satisfied so long as, upon establishment of the owners' association for the Project, the owners' association shall maintain (a) an "all risk," special form property policy on the condominium project that provides 100% replacement cost insurance coverage, and includes business interruption coverage (and flood insurance if applicable) from a company or companies with a Best Guide rating of A:V or better, providing a Lender's Loss Payable Endorsement form 438BFU in favor of the Lender, and (b) a Comprehensive General Liability policy with limits of not less than \$2,000,000 combined single limit per occurrence and \$3,000,000 aggregate.

7.8 Required Consent of Lender. Borrower and Grantor shall not, except with Lender's prior written consent:

7.8.1 partition or subdivide the Land or the Project;

7.8.2 consent to the abandonment or termination of the condominium project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain; or

7.8.3 consent to any material amendment to the declaration, bylaws or rules and regulations of the condominium owners' association, or equivalent constituent documents of the condominium project, including, but not limited to, any amendment that would change the fraction or percentage of allocated interests of the unit owners in the condominium project; provided that Lender hereby consents to all amendments to the declaration for the purpose of adding additional phases to the condominium project.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower that apply to this Deed of Trust and to the Collateral.



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8.2 Cooperation. Borrower and Grantor shall, upon request, cooperate with Lender or Trustee to correct any defect, error or omission that may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge, and deliver such further instruments and take such further actions as may be reasonably requested by Lender or Trustee to carry out more effectively the purposes of this Deed of Trust.

8.3 Secured Obligations of Borrower and Grantor, Joint and Several. If more than one person has executed this Deed of Trust as Borrower or Grantor, the Secured Obligations of all such persons hereunder shall be joint and several.

8.4 Severability. If any term of this Deed of Trust, or the application thereof to any person or circumstances, shall, to any extent, be invalid, void or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid, void or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law. If the lien of this Deed of Trust is invalid, void or unenforceable as to any part of the Secured Obligations, or if the lien is invalid, void or unenforceable as to any part of the Collateral, the unsecured or partially secured portion of such indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of such Secured Obligations, and all payments made on such Secured Obligations shall be considered to have been first paid on and applied to the full payment of that portion of such indebtedness that is not secured or fully secured by the lien of this Deed of Trust.

8.5 No Waiver or Cure. No waiver or delay or omission in the exercise or enforcement by Lender of any of its rights or remedies hereunder or under any of the other Loan Documents shall be considered a waiver of any subsequent application of, or right to enforce, such right or remedy, or of the right to enforce any other right or remedy of Lender in another instance. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of this Deed of Trust or any other Loan Document in another instance.

8.6 Additional Security. If Lender at any time holds additional security for any of the Secured Obligations, all such security shall be taken, considered, and held as cumulative, and Lender may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with the exercise of any of its rights or remedies hereunder or after a sale is made hereunder. The taking of additional security, the execution of partial releases of the security, or any extension of the time of payment of the Secured Obligations shall not diminish the force, effect, or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety, or endorser for the payment of any such indebtedness.

8.7 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 Collateral 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 a beneficiary or 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 Secured 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 Lender 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) Borrower or Grantor may lawfully pay the Tax without causing any resulting economic disadvantage or increase of tax



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to Lender or Trustee; and (ii) Borrower or Grantor pays the Tax (including any tax on the payment made) within 30 days after notice from Lender that the tax law has been enacted.

8.8 Amendments. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

8.9 Successors in Interest. Subject to the limitations on transfer contained in the Loan Documents, the terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto.

8.10 Modification and Extensions. References to the Note, the Loan Agreement, the Loan Documents and the Related Loan Documents in this document shall be deemed to include all modifications, extensions, and renewals thereof.

8.11 Applicable Law. The provisions of this Deed of Trust shall be governed by and construed in accordance with the laws of the Project State, without regard to the choice of law rules of the Project State and except to the extent that federal laws preempt the laws of the Project State.

8.12 Merger. No merger shall occur as a result of Lender's acquiring any other estate in or any other lien on the Collateral unless Lender consents to a merger in writing.

8.13 Waiver of Marshaling. Borrower and Grantor waive all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Borrower or Grantor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

8.14 Unsecured Obligations. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following Secured Obligations (the "**Unsecured Obligations**"): (a) any Secured Obligations evidenced by or arising under an Independent Indemnity, and (b) any other Secured Obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other Secured Obligations relate specifically to the presence on the Property of Hazardous Materials (as defined in the Loan Agreement) and are the same or have the same effect as any of the Secured Obligations evidenced by or arising under any Independent Indemnity. 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 impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all Secured Obligations that are secured by this Deed of Trust following foreclosure.

8.15 Actions Solely for Benefit of Beneficiary. Any and all subsequent purchasers of the Property, and any other parties acquiring an interest in the Property, are hereby put on notice that any inspection or approval of any part of any development, construction, renovation, or improvement of the Property by Beneficiary or any agent of Beneficiary shall be made exclusively for the benefit of Beneficiary, and Beneficiary makes no representations whatsoever to any third party acquiring any interest in the Property. Such third party shall have no rights of reliance upon any action taken by Beneficiary. Beneficiary makes no representations whatsoever to any third party as to the adequacy or legality of any action of Grantor and any action of Beneficiary is solely for the benefit of Beneficiary.



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8.16 Oral Agreements Notice.

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

[Signature pages to follow]



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EXHIBIT A

LEGAL DESCRIPTION

The East Half and the North 25 feet of the West Half of Block 3; all of Block 4, EXCEPT the North 25 feet of the West Half; the South 13 feet of Lot 8, Block 6 and all of Blocks 7, 8 and 9 inclusive, all located in Albertson's Addition to the Town of Burlington, according to the plat thereof, recorded in Volume 4 of Plats, page 1, records of Skagit County, Washington;

Also together with those portions of Acre Street and Mount Vernon Street vacated by City of Burlington Ordinance No. 874 and that portion of Byron Street vacated by City of Burlington Ordinance No. 880;

EXCEPT the West 15 feet of Byron Street adjacent to Block 5 of said Plat;

AND EXCEPT the East 15 feet of the North 50 feet of Byron Street as vacated by said Ordinance No. 880.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON



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