

RETURN NAME AND ADDRESS:

Wells Fargo Bank, National Association
Community Lending & Investment
5400 LBJ Freeway, Suite 1000
Dallas, Texas 75240
MAC T9236-100

Attn: Kathy Cotton Farruya
Loan No. 1010100



Skagit County Auditor \$312.00
5/23/2014 Page 1 of 24 12:19PM

UNITED STATES OF AMERICA
SKAGIT COUNTY

140014-S

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

**NAME OF
GRANTOR(S):**

VILLA KATHLEEN REDEVELOPMENT LLLP

**NAME OF
TRUSTEE:**

STEWART TITLE GUARANTY COMPANY

**NAME OF
BENEFICIARY:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

**LEGAL
DESCRIPTION:**

- (1) PTN LOT 12, SUNRISE ADD. AKA LOT 1, SP #CON-89-01;
- (2) LOTS 13-23, BLK 2, FIRTSCHE'S ADD. TO BURL.; and
- (3) PTN SE 1/4 OF SE 1/4, 17-34-4 E. W.M.

Additional legal descriptions are on Pages 21 and 22 of this document.

**ASSESSOR'S
PROPERTY TAX
PARCEL ACCOUNT
NUMBER(S):**

- (1) 4064-000-012-0001 (P70890) (Parcel A);
- (2) 4084-002-023-0000 (P72536) (Parcel B); and
- (3) 340417-4-014-0003 (P26029) (Parcel C)

THIS SECURITY INSTRUMENT SECURES A NOTE WHICH PROVIDES FOR
A VARIABLE INTEREST RATE

CONSTRUCTION DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THE PARTIES TO THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Security Instrument"), made as of May 22, 2014, are VILLA KATHLEEN REDEVELOPMENT LLLP, a Washington limited liability limited partnership ("Grantor"), STEWART TITLE GUARANTY COMPANY ("Trustee"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Grantor irrevocably grants, conveys, warrants and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the cities of Mt. Vernon, Concrete and Burlington, County of Skagit, State of Washington, described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Grantor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, water rights and water stock related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all interest or estate which Grantor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **ADDRESS.** The address of the Subject Property (if known) are: (i) 7649 South Rietze Avenue, Concrete, Washington 98237; (ii) 535 N. Pine Street, Burlington, Washington 98233; and (iii) 1815 E. Fir Street, Mount Vernon, Washington 98273. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Subject Property as described on Exhibit A.
- 1.3 **USE OF PROPERTY.** Grantor warrants that the Subject Property is not used principally for agricultural or farming purposes.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Grantor makes this Security Instrument for the purpose of securing the following obligations ("Secured Obligations"):
- (a) Payment to Beneficiary of all sums at any time owing under that certain Promissory Note Secured by Security Instrument ("Note") of even date herewith, in the principal



amount of SIX MILLION SEVEN HUNDRED FIFTY FOUR THOUSAND FIVE HUNDRED EIGHTY THREE AND NO/100THS DOLLARS (\$6,754,583) executed by Villa Kathleen Redevelopment LLLP, a Washington limited liability limited partnership ("Borrower"), and payable to the order of Beneficiary, as lender; and

- (b) Payment and performance of all covenants and obligations of Grantor under this Security Instrument; and
- (c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Building Loan Agreement ("Loan Agreement") of even date herewith by and between Borrower and Beneficiary, as lender, as well as under all other Loan Documents (as such term is defined in the Loan Agreement); and
- (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and
- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Security Instrument; and
- (f) Payment and performance of all obligations of Borrower under or in connection with any Swap Agreement, as defined in the Loan Agreement at any time entered into between Grantor and Beneficiary, together with all modifications, extensions, renewals and replacements thereof; and
- (g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. The obligations of any guarantor under any guarantee of the Loan or of any of Borrower's obligations under the Loan Agreement, including but not limited to any repayment guarantee or completion guarantee, do not constitute Secured Obligations.

2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

3.1 **ASSIGNMENT.** Grantor hereby irrevocably assigns to Beneficiary all of Grantor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof,



and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Grantor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

- 3.2 **GRANT OF LICENSE**. Beneficiary confers upon Grantor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Grantor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Grantor hereby relieves the lessees from any liability to Grantor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **EFFECT OF ASSIGNMENT**. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Grantor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Grantor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES**. Grantor represents and warrants that: (a) the Schedule of Leases attached hereto as Schedule 1 is, as of the date hereof, a true, accurate and complete list of all Leases; (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS**. Grantor covenants and agrees at Grantor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any commercial lease of the Property ("Commercial Lease"), whether the default be that of the lessee or of the lessor; (c) except for any Commercial Lease, exercise Grantor's best efforts to keep all portions of the Subject Property that are currently subject to Leases leased at all times at rentals no higher than rents subject to Section 42 of Internal Revenue Code



with respect to the Subject Property; (d) deliver to Beneficiary fully executed copies of each and every Lease (other than individual leases of residential rental units) if requested to do so; (e) execute and record such additional assignments of any Lease (other than individual leases of residential units) or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease (other than individual leases of residential rental units) to the Security Instrument, in form and substance acceptable to Beneficiary, as Beneficiary may request; Grantor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Commercial Lease after the date hereof other than residential leases to individual tenants meeting the requirements, if any, imposed under the affordability and regulatory covenants recorded in a senior lien position to this Security Instrument; (ii) execute any other assignment relating to any of the Leases (iii) discount any rent or other sums due under any Commercial Lease or collect the same, in advance, other than to collect rentals one (1) month in advance of the time when it becomes due (except for any Commercial Lease); (iv) terminate, modify or amend any of the terms of any Commercial Lease or, with respect to non-commercial Leases, in any manner release or discharge the lessees from any obligations thereunder if such termination, modification or amendment would constitute a default of any affordability covenant recorded in a senior lien position to this Security Instrument; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other Security Instrument or encumbrance, except as otherwise contemplated in the Priority and Subordination Agreement entered into on or about May 22, 2014 entered into by Grantor and Beneficiary, together with certain other parties ("Subordination Agreement"). Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary'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.

- 3.6 **ESTOPPEL CERTIFICATES**. Within thirty (30) days after written request by Beneficiary, Grantor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Grantor and by each other party to a Lease other than a tenant under a residential rental lease, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Grantor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST**. Grantor hereby grants and assigns to Beneficiary as of the "Effective Date" (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Grantor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein or (ii) any existing or future improvements on the real property (which real property and improvements are collectively referred to herein as the "Subject Property"); together with all rents and



security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, including without limitation all unpaid capital contributions of Grantor's partners or other owners), licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Grantor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undeclared, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Subject Property; all advance payments of insurance premiums made by Grantor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, including but not limited to accounts established by Grantor with Secured Party), refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all right of Grantor in and to any and all capital contributions received or to be received from any member of Grantor; all right of Grantor to enforce the obligations to receive capital contributions from any member of Grantor under any agreement, promissory note or other instruments and any security agreements or pledges of security; all of Grantor's right, title and interest in and to federal and state low-income housing tax credits reserved or allocated to the Subject Property pursuant to Section 42 and/or Section 48 of the Internal Revenue Code of 1986, as amended and any corresponding tax benefits available under federal or state law or regulation; all of Grantor's right title and interest, now or hereafter acquired, to the payment of money from Secured Party to Grantor under any Swap Agreement, all renewals, replacements and proceeds of, and additions and accessions to, any of the foregoing, including without limitation all securities, guaranties, warranties, indemnity agreements, insurance policies and other agreements pertaining to the same or the property described therein, together with whatever is receivable or received when any of the above-described properties or proceeds are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all rights to payment with respect to any cause of action affecting or relating to any of the foregoing, and all partnership interests or other equity interests now owned or hereafter acquired by Grantor as a result of exchange offers, direct investments or contributions or otherwise and any options or other rights of Grantor with respect to any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Security Instrument constitutes a fixture filing under the Uniform Commercial Code as adopted in Washington, RCW ch 62A, as amended or recodified from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC.



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Beneficiary by acceptance of this Security Instrument acknowledges that it cannot directly control or take possession of federal and/or state low-income housing tax credits reserved or allocated to the Subject Property pursuant to Section 42 and/or Section 48 of the Internal Revenue Code of 1986, as amended and any corresponding tax benefits available under federal or state law or regulation unless and until Beneficiary has acquired title to the Project by foreclosure or deed in lieu thereof (after expiration of any applicable cure or grace periods under the Loan Documents) or the Subject Property has otherwise been transferred to Beneficiary or its designee.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Grantor represents and warrants that: (a) Grantor has, or will have, good title to the Collateral; (b) Grantor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) if Grantor is an individual, then Grantor's principal residence is located at the address shown in Section 7.11; (d) if Grantor is an organization, then Grantor's chief executive office is located at the address shown in Section 7.11; (e) if Grantor is a registered organization (as defined in RCW 62A.9A-102(70)), then Grantor is organized under the law of the State shown in the first paragraph of this Security Instrument with the name of the Grantor; and (f) all Collateral that is tangible personal property is located at the Subject Property, and no part will be removed from the Subject Property without Grantor giving Beneficiary prior notice, or without replacement with similar items of Collateral of comparable value.
- 4.3 **RIGHTS OF BENEFICIARY.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Grantor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Grantor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Beneficiary shall have consented and complied with the conditions of said remedy under RCW 62A.9A-620 or RCW 62A.9A-621, or other applicable law.
- 4.4 **RIGHTS OF BENEFICIARY ON DEFAULT.** Upon the occurrence of a Default (hereinafter defined) under this Security Instrument, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:
- (a) Beneficiary may (i) upon written notice, require Grantor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, (but subject to any notice rights of residents pursuant to Washington State law) enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, or without removal, render equipment unusable, and then collect, sell, lease, license or otherwise and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Grantor's expense; (iii) sell, assign, lease, license and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
 - (b) Beneficiary may, for the account of Grantor and at Grantor's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now



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or hereafter owing to Grantor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Grantor shall make an express consent to the acceptance under RCW 62A.9A-620(b), or other applicable law.

- 4.5 **POWER OF ATTORNEY.** Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Grantor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Grantor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.
- 4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents (as defined in the Loan Agreement), so long as no Default exists under this Security Instrument or any of the Loan Documents, Grantor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Grantor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Grantor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Grantor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Security Instrument is a first and prior lien on the Subject Property.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Grantor's rights to contest payment of taxes as may be provided in the Loan Agreement, Grantor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Subject to Grantor's rights to contest payment of taxes as may be provided in the Loan Agreement, Grantor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Grantor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** At any time following the occurrence of a Default, at Beneficiary's option and upon its demand, Grantor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when same are next due. If Beneficiary determines that any amounts paid by Grantor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Beneficiary shall notify Grantor of the increased amounts required to pay all amounts when due, whereupon Grantor shall pay to Beneficiary within thirty (30) days thereafter the additional



amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Grantor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Grantor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Grantor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Security Instrument, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and the Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Grantor and no other party shall have any right or claim thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Grantor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Grantor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Security Instrument. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Grantor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Grantor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Beneficiary to be maintained by Grantor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Grantor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

(b) As long as there is no Default under any of the Loan Documents or the existence of any event that would constitute a Default upon the giving of notice or the passage of



time, or both (exclusive of a Default arising from or relating to the casualty or condemnation), the, Beneficiary will permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon satisfaction of the following conditions: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Grantor since the date of this Security Instrument; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Grantor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, or such longer period consented to by Beneficiary, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

- 5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Loan Agreement, Grantor covenants: (a) to insure the Subject Property and Collateral against such risks as Beneficiary may require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof (exclusive of any planned removal or demolition set forth in the Plans and Specifications approved by Beneficiary), not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.
- 5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims.



Grantor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.

- (a) Trustee accepts this trust when this Security Instrument is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **GRANTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**



- (d) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

- (a) Grantor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust including reasonable attorneys' fees. Grantor shall pay to Beneficiary reasonable compensation for services rendered concerning this Security Instrument, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Grantor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Security Instrument; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under any agreement related to the Subject Property or Collateral or under this Security Instrument; or (iii) any loss sustained by Grantor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Grantor.
- (b) **GRANTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR WHICH ARE NOT THE RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER: (i) BY REASON OF THIS SECURITY INSTRUMENT; (ii) BY REASON OF THE EXECUTION OF THIS SECURITY INSTRUMENT OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF GRANTOR TO PERFORM GRANTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT**



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PROPERTY. THE ABOVE OBLIGATION OF GRANTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS SECURITY INSTRUMENT.

- (c) Grantor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

- 5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.
- 5.12 **DUE ON SALE OR ENCUMBRANCE.** Except as otherwise permitted under the Building Loan Agreement, if the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Grantor), mortgaged (except for deeds of trust identified in the Subordination Agreement), assigned, further encumbered or leased (other than residential leases to individual tenants meeting the requirements, if any, imposed under the affordability and regulatory covenants recorded in a senior lien position to this Security Instrument), whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Subject Property and Collateral.
- 5.14 **RECONVEYANCE.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Security Instrument or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.



5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.

5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time and upon reasonable notice (including any notice to tenants required under Washington landlord/tenant laws if inspection of individual dwelling units is intended) for the purpose of inspecting the Subject Property and Collateral and ascertaining Grantor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Grantor to make any payment of principal or interest on the Promissory Note, or to pay any other amount due hereunder or under the Promissory Note when the same is due and payable, whether at maturity, by acceleration or otherwise, if such failure continues for ten (10) days after Beneficiary provides written notice to Grantor thereof; (b) the failure of Grantor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Grantor contained herein and the continuance of such failure for thirty (30) days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure; or (c) the existence of any Default as defined in the Loan Agreement.

6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

- (a) With or without notice, to declare all Secured Obligations (other than Swap Agreements) immediately due and payable;
- (b) With or without notice, and without releasing Grantor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Grantor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Beneficiary or Trustee under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Security Instrument, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (v) to employ counsel, accountants, contractors and other appropriate persons.
- (c) To 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 Grantor hereunder, and Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Grantor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy



of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Grantor hereby consents to such appointment;

- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Grantor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) To cause the Subject Property to be sold by Trustee to satisfy the Secured Obligations through the exercise of the nonjudicial power of sale. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, excluding Trustee, may purchase at the sale;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion.
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for



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the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Grantor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- (i) Pursuant to the terms of a Swap Agreement between Grantor and Beneficiary, terminate such Swap Agreement.

6.3 APPLICATION OF FORECLOSURE SALE PROCEEDS. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations including all amounts owed under the Note; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.4 APPLICATION OF OTHER SUMS. All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 NO CURE OR WAIVER. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.

6.6 PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES. Grantor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Grantor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.

6.7 POWER TO FILE NOTICES AND CURE DEFAULTS. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or



any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Grantor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Security Instrument and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.
- 7.3 **OBLIGATIONS OF GRANTOR, JOINT AND SEVERAL.** If more than one person has executed this Security Instrument as "Grantor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Security Instrument as a Grantor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Security Instrument or any other obligation of that married person secured by this Security Instrument may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 7.5 **WAIVER OF MARSHALLING RIGHTS.** Grantor, for itself and for all parties claiming through or under Grantor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.



- 7.7 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.7 does not waive or modify the provisions of Section 5.12.
- 7.8 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.9 **WASHINGTON LAW.** This Security Instrument shall be construed in accordance with the laws of the State of Washington, except to the extent that federal laws preempt the laws of the State of Washington.
- 7.10 **INCORPORATION.** Exhibit A, and Schedule 1, all as attached, are incorporated into this Security Instrument by this reference.
- 7.11 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Security Instrument shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:



Grantor:	Villa Kathleen Redevelopment LLLP 2505 3 rd Avenue, Suite 204 P.O. Box 2253 Seattle, Washington 98121
Trustee:	Stewart Title Guaranty Company 1420 Fifth Avenue, Suite 440 Seattle, Washington 98101 (w/ reference to Loan No. 1010100 and Beneficiary AU #07490)
With a copy to:	Kantor Taylor Nelson Evatt & Decina PC 901 Fifth Avenue, Suite 4000 Seattle, Washington 98164 Attention: Mark Kantor, Esq.
With a copy to:	Alliant Villa Kathleen, LLC Alliant ALP 74, LLC c/o Alliant Asset Management Company, LLC 21600 Oxnard Street, Suite 1200 Woodland Hills, CA 91367 Attention: Tony Palaigos, Esq.
With a copy to:	Bocarsly, Emden, Cowan, Esmail & Arndt LLP 633 West 5th Street, 70th Floor Los Angeles, CA 90071 Attention: Lance Bocarsly, Esq.
Beneficiary:	Wells Fargo Bank, National Association Community Lending & Investment 5400 LBJ Freeway, Suite 1000 Dallas, Texas 75240 MAC T9236-100 Attn: Kathy Cotton Farruya Loan No. 1010100
With a copy to:	Wells Fargo Bank, National Association Minneapolis Loan Center (AU #07490) 608 Second Avenue South MAC N(#)N9303-110 Minneapolis, Minnesota 55402 Attention: Roxanne Swanson



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Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Grantor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Grantor naming Beneficiary, "Lender" or the "Construction Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Grantor to perform its obligations to Beneficiary under the Note or the Loan Agreement.

Any cure of any Default made or tendered by the limited partner of Grantor shall be deemed to be a cure by Grantor and shall be accepted or rejected by Beneficiary on the same basis as if made or tendered by the Grantor.

At the same time Beneficiary delivers a written notice of Default to Grantor, Beneficiary shall deliver written notice of such Default to Grantor's limited partner. Failure of Beneficiary to send a notice of Default to Borrower's limited partner shall not prevent the exercise of the Beneficiary's rights and remedies under this Security Instrument or any of the Loan Documents

**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.**

IN WITNESS WHEREOF, Grantor has executed this Security Instrument as of the day and year set forth above.

"GRANTOR"

VILLA KATHLEEN REDEVELOPMENT LLLP, a Washington
limited liability limited partnership

By: Cobble Knoll I Mercy LLC,
its General Partner

By: Mercy Housing Northwest, its Sole Member and
Manager

By: Bill Rumpf
Bill Rumpf, President

(ALL SIGNATURES MUST BE ACKNOWLEDGED)



**EXHIBIT A
DESCRIPTION OF SUBJECT PROPERTY**

Exhibit A to Construction Security Instrument with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by **VILLA KATHLEEN REDEVELOPMENT LLLP**, as Grantor to **STEWART TITLE OF SPOKANE**, as Trustee for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Beneficiary, dated as of May 22, 2014.

All that certain real property described as follows:

PARCEL "A": **EVERGREEN**

Lot 1, Concrete Short Plat No. SP# CON-89-01, approved June 14, 1989 and recorded on December 1, 1989, in Volume 8 of Short Plats, page 192, under Auditor's File No. 8912010018, records of Skagit County, Washington, being a portion of Lot 12, Plat of Sunrise Addition, in Volume 4 of Plats, Page 44, records of Skagit County, Washington.

Situate in the Town of Concrete, County of Skagit, State of Washington.

TAX ACCOUNT NO. 4064-000-012-0001 (P70890)

PARCEL "B": **VILLA KATHLEEN**

Lots 13 through 23, inclusive, Block 2, "FRITSCH'S ADDITION TO BURLINGTON," as per plat recorded in Volume 3 of Plats, page 78, records of Skagit County, Washington.

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

TAX ACCOUNT NO. 4084-002-023-0000 (P72536)

PARCEL "C": **FIRCREST**

That portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 17, Township 34 North, Range 4 East, W.M., described as follows;

Beginning at the Southwest corner of Lot 17, "BEL-AIR MANOR THIRD ADDITION," as per plat recorded in Volume 10 of Plats, page 42, records of Skagit County, Washington; thence South parallel with the East line of 18th Street a distance of 126 feet to the true point of beginning of this description; thence Northeasterly to a point on the Southwesterly line of North Viewmont Drive (as shown on said plat) which point lies 60 feet Southeasterly from the Southeast corner of said Lot 17 when measured along the Southwesterly line of said North Viewmont Drive; thence Southeasterly along said Southwesterly line a distance of 113 feet, more or less, to the Northwest corner of Lot 14, "BEL-AIR MANOR FIRST ADDITION," as per plat recorded in Volume 7 of Plats, page 60, records of Skagit County, Washington; thence South along the West line of said Lot 14 and along the West line of Lot 1 of said plat to the North line of Fir Street; thence West along the North line of Fir Street to the East line of 18th Street; thence North along the East line of 18th Street a distance of 181 feet, more or less, to a point 174 feet South of the Southwest corner of Lot 6, "BEL-AIR MANOR FOURTH ADDITION," as per plat recorded in Volume 10 of Plats, page 33, records of Skagit County, Washington; thence East parallel with the South line of said Lot 6 a distance of 97.50 feet; thence North to the true point of beginning;



EXCEPT that portion deeded to the City of Mount Vernon by deed recorded July 1, 1993, under Auditor's File No. 9307010054, records of Skagit County, Washington.

Situate in the City of Mount Vernon, County of Skagit, State of Washington.

TAX ACCOUNT NO. 340417-4-014-0003 (P26029)



SCHEDULE OF LEASES

Schedule 1 to Construction Security Instrument with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by **VILLA KATHLEEN REDEVELOPMENT LLLP**, as Grantor to **STEWART TITLE**, as Trustee for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Beneficiary, dated as of May 22, 2014.

N/A



201405230059

STATE OF WASHINGTON)

COUNTY OF King)

)SS.

On this 23rd day of May, 2014, before me personally appeared Bill Rumpf, to me known to be the President of Mercy Housing Northwest, the Sole Member and Manager of Cobble Knoll I Mercy LLC, the general partner of Villa Kathleen Redevelopment LLLP, a Washington limited liability limited partnership (the "Partnership") that executed the within and foregoing instrument, and acknowledged this instrument to be the free and voluntary act and deed of said Partnership, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said Partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

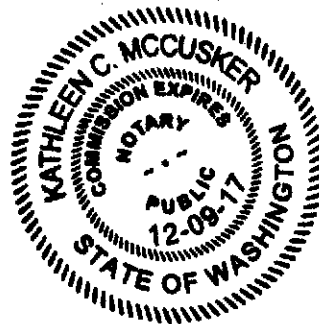
Signature: [Signature]

Name (Print): Kathleen C. McCusker

NOTARY PUBLIC in and for the State of

Washington, residing at King

My appointment expires: 12-09-17



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