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Skagit County Auditor

\$319.00

3/31/2015 Page

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31

3:40PM

When recorded return to:

WHOLESALE CAPITAL CORPORATION
c/o BOFI FEDERAL BANK
4350 La Jolla Village Dr., Suite 140
Mailstop 6-IPL
San Diego, CA 92122
Attn: Servicing Department

GUARDIAN NORTHWEST TITLE CO.

108685-2

**DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(WASHINGTON)**

Grantor(s)/Mortgagor(s): BARTON GIN GEE ENG, WENDEE KALEINAM ENG and KNG@BURLINGTON, LLC,
a Washington limited liability company

Grantee/Beneficiary: WHOLESALE CAPITAL CORPORATION, a California corporation, Beneficiary
T.D. SERVICE COMPANY OF WASHINGTON, Trustee

Legal Description

Abbreviated: Lots 14 through 18, inclusive, Block 33, Amended Plat of Burlington

Additional legal description is on Exhibit "A", page A-1 of this document.

Assessor's Tax Parcel ID #: 4076-033-018-0002, P71518

**DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(WASHINGTON)**

A. THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is dated as of **March 20, 2015**, and is given by **BARTON ENG** and **WENDEE ENG** (who acquired title as **BARTON GIN GEE ENG** and **WENDEE KALEINANI ENG**) (jointly and severally referred to herein in the singular as "**Borrower**") and **KNG@BURLINGTON, LLC**, a Washington limited liability company ("**Other Fee Owner**"), whose address is **921 8th Avenue, Honolulu, HI 96816-2115**, collectively as grantor, to **T.D. SERVICE COMPANY OF WASHINGTON**, as trustee ("**Trustee**"), for the benefit of **WHOLESALE CAPITAL CORPORATION**, a California corporation, whose address is **c/o BOFI FEDERAL BANK, 4350 La Jolla Village Dr., Suite 140, Mailstop 6-IPL, San Diego, CA 92122**, Attn: **Servicing Department**, as beneficiary ("**Lender**"). Other Fee Owner's organizational identification number is **603476982**. Borrower and Other Fee Owner are jointly and severally referred to herein in the singular as "**Mortgagor**".

B. Mortgagor in consideration of the indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in **Skagit County, State of Washington** and described in Exhibit "A" attached to this Instrument.

C. TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing on the earlier of (i) **April 1, 2045**, and (ii) the date on which the unpaid principal balance of the Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (the "**Maturity Date**"), in the principal amount of **FOUR HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (US \$422,500.00)**, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Mortgagor contained in the Loan Documents (other than the Environmental Indemnity and any guaranty).

D. Mortgagor represents and warrants that Mortgagor is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the Schedule of Title Exceptions. Mortgagor covenants that Mortgagor will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

Covenants. In consideration of the mutual promises set forth in this Instrument, Mortgagor and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Assignment**" means, collectively, the provisions of Sections 3 and 4 of this Instrument relating to the assignment of rents and leases affecting the Mortgaged Property.

(b) "**Attorneys' Fees and Costs**" means (i) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable (whether or not any lawsuit or other proceeding is instituted), including costs of Lender's and Loan Servicer's allocable costs of in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees. As used in this Instrument and in the Note, "Attorneys' Fees and Costs" shall include those awarded by an appellate court.

(c) "**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

THIS DEED OF TRUST IS A FIRST DEED OF TRUST, AND IS PRIOR AND SUPERIOR TO A \$65,000.00 SECOND LIEN DEED OF TRUST DATED MARCH 23, 2015 (THE "APPROVED SECOND DEED OF TRUST"), WHICH APPROVED SECOND DEED OF TRUST IS TO BE RECORDED SUBSTANTIALLY CONCURRENTLY HERewith.

Washington Deed of Trust

(d) **"Borrower"** means, jointly and severally, all Persons identified as "Borrower" in paragraph A of this Instrument, together with their successors and assigns.

(e) **"Borrower Certificate"** means that certain Borrower Certificate dated the same date as this Instrument, executed by Mortgagor in favor of Lender.

(f) **"Collateral Agreement"** means any separate agreement between Mortgagor and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Mortgagor and Lender which provide for the establishment of any other fund, reserve or account.

(g) **"Controlling Entity"** means an entity which owns, directly or indirectly through one or more intermediaries, (A) a general partnership interest or a Controlling Interest of the limited partnership interests in Mortgagor (if Mortgagor is a partnership or joint venture), (B) a manager's interest in Mortgagor or a Controlling Interest of the ownership or membership interests in Mortgagor (if Mortgagor is a limited liability company), or (C) a Controlling Interest of any class of voting stock of Mortgagor (if Mortgagor is a corporation).

(h) **"Controlling Interest"** means (i) 51 percent or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 percent, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party.

(i) **"Environmental Indemnity"** means that certain Environmental Indemnity Agreement dated the same date as this Instrument, executed by Mortgagor, as Indemnitor, in favor of Lender, as Indemnitee.

(j) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(k) **"Event of Default"** means the occurrence of any event listed in Section 22.

(l) **"Fixtures"** means all property owned by Mortgagor which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(m) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property or over Mortgagor.

(n) **"Hazard Insurance"** is defined in Section 19.

(o) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(p) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Mortgagor or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the

Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, as amended by the Superfund Amendments Reauthorization Act of 1986, the Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Solid Waste Disposal Act, as amended, the Clean Air Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, the Washington Model Toxics Control Act, RCW Chapter 70.105(d), the Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

(q) **"Impositions"** and **"Imposition Deposits"** are defined in Section 7(a).
(r) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(s) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document (other than the Environmental Indemnity and any guaranty), including prepayment premiums, late charges, default interest, and advances to protect the security of this Instrument under Section 12 of this Instrument or any other applicable provision of this Instrument or as permitted by law.

(t) **"Initial Owners"** means, with respect to Mortgagor or any other entity, the Person(s) that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100% of the ownership interests in Mortgagor or that entity.

(u) **"Land"** means the land described in Exhibit "A".

(v) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Mortgagor is a cooperative housing corporation), and all modifications, extensions or renewals.

(w) **"Lender"** means the entity identified as "Lender" in paragraph A of this Instrument, or any subsequent holder of the Note.

(x) **"Loan Documents"** means the Note, this Instrument, the Assignment, the Borrower Certificate, the Environmental Indemnity, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Plans, and any other documents now or in the future executed by Borrower, Other Fee Owner, any guarantor or any other Person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(y) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in paragraph A of this Instrument.

(z) **"Mortgaged Property"** means all of Mortgagor's present and future right, title and interest in and to all of the following: (1) the Land; (2) the Improvements; (3) the Fixtures; (4) the Personality; (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated; (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not Mortgagor obtained the insurance pursuant to Lender's requirement; (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof; (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations; (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; (10) all Rents and Leases;

(11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument; (12) all funds on deposit pursuant to any separate agreement between Mortgagor and Lender (including, without limitation, all Imposition Deposits) for the purpose of establishing replacement reserves for the Mortgaged Property, to fund any water and sewer charges, premiums for fire or other hazard insurance, rent loss insurance or other insurance required by Lender, taxes, assessments, vault rentals, or other charges or expenses required by Lender to protect the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Mortgagor and Lender which provide for the establishment of any other fund, reserve or account; (13) all refunds or rebates of impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated); (14) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(aa) **"Mortgaged Property UCC Collateral"** means any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof.

(bb) **"Mortgagor"** means, jointly and severally, all Persons identified as "Borrower" and "Other Fee Owner" in paragraph A of this Instrument, together with their successors and assigns.

(cc) **"Note"** means the Promissory Note described in paragraph C of this Instrument, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

(dd) **"O&M Plan"** shall have the meaning as defined in the Environmental Indemnity.

(ee) **"Other Fee Owner"** means, jointly and severally, all Persons identified as "Other Fee Owner" in paragraph A of this Instrument, together with their successors and assigns.

(ff) **"Person"** means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

(gg) **"Personalty"** means all: (i) accounts (including deposit accounts); (ii) equipment and inventory owned by Mortgagor which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software); (iii) other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements; (iv) any operating agreements relating to the Land or the Improvements; (v) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements; (vi) all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority; and (vii) any rights of Mortgagor in or under letters of credit.

(hh) **"Property Jurisdiction"** is defined in Section 30(a).

(ii) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, and, if Mortgagor is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

(jj) **"Schedule of Title Exceptions"** means title exceptions approved by Lender and shown in the schedule of exceptions to coverage in the title policy issued to Lender contemporaneously with the recordation of this Instrument and insuring Lender's interest in the Mortgaged Property.

(kk) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(ll) **"Transfer"** is defined in Section 21.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for the Mortgaged Property UCC Collateral. Mortgagor, as debtor, hereby grants to Lender, as secured party, a security interest in the Mortgaged Property UCC Collateral. Mortgagor hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Mortgagor agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Without limiting the generality of the foregoing, Mortgagor authorizes Lender to file any financing statement that describes the collateral as "all assets" of Mortgagor, or words to similar effect. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Mortgagor shall not create or permit to exist any other lien or security interest in any of the Mortgaged Property UCC Collateral. Unless Mortgagor gives notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Mortgagor shall not (i) change its name, identity, structure or jurisdiction of organization, (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property UCC Collateral is stored, held or located. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the Mortgaged Property UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law. The following information is provided for purposes of the Uniform Commercial Code:

Debtor Name: **BARTON G. ENG**
Name of Record Owner: **BARTON GIN GEE ENG**
State of Debtor's principal residence: **Hawaii**

Debtor Name: **WENDEE K. ENG**
Name of Record Owner: **WENDEE KALEINANI ENG**
State of Debtor's principal residence: **Hawaii**

Debtor Name: **KNG@BURLINGTON, LLC, a Washington limited liability company**
Name of Record Owner: **KNG@BURLINGTON, LLC, a Washington limited liability company**
State where Debtor's Principal Place of Business (or Chief Executive Office Address if Debtor has more than one place of business) is located: **Hawaii**

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Mortgagor absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Mortgagor to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Mortgagor. Promptly upon request by Lender, Mortgagor agrees to execute and deliver such further assignments as Lender may from time to time require. Mortgagor and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of

Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Mortgagor that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Mortgagor authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Mortgagor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Mortgagor free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Mortgagor's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Mortgagor shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Mortgagor hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Mortgagor any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Mortgagor shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Mortgagor represents and warrants to Lender that Mortgagor has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Mortgagor has not performed, and Mortgagor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Mortgagor shall not collect or accept payment of any Rents more than two (2) months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Mortgagor and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Mortgagor's solvency and without the necessity of giving prior notice (oral or written) to Mortgagor, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Mortgagor, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. If Mortgagor is a housing cooperative corporation or association, Mortgagor hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, it being acknowledged and agreed that the indebtedness is an obligation of Mortgagor and must be paid out of maintenance charges payable by Mortgagor's tenant shareholders under their proprietary leases or occupancy agreements. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon

Lender's entering upon and taking possession and control of the Mortgaged Property, Mortgagor shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including computer files and other records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Mortgagor and its representatives from the Mortgaged Property. Mortgagor acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Mortgagor and only for those Rents actually received. Lender shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Mortgagor hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES: LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Mortgagor absolutely and unconditionally assigns and transfers to Lender all of Mortgagor's right, title and interest in, to and under the Leases, including Mortgagor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Mortgagor to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Mortgagor's right, title and interest in, to and under the Leases. Mortgagor and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Mortgagor that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Mortgagor of Lender's exercise of its rights under this Section 4, Mortgagor shall have all rights, power and authority granted to Mortgagor under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Mortgagor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Mortgagor shall comply with and observe Mortgagor's obligations under all Leases, including Mortgagor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Mortgagor acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Mortgagor shall constitute conclusive evidence that all responsibility for the operation, control,

care, management and repair of the Mortgaged Property is and shall be that of Mortgagor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Mortgagor of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Mortgagor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Mortgagor shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Mortgagor shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Mortgagor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Mortgagor shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument; (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Mortgagor shall not receive or accept Rent under any Lease for more than two (2) months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. FULL RECOURSE PERSONAL LIABILITY. Borrower shall have full recourse personal liability under the Note, this Instrument and all other Loan Documents for the repayment of the Indebtedness and for the payment and performance of any and all other obligations of Borrower under the Note, this Instrument and all other Loan Documents.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Unless this requirement is waived in writing by Lender, or as otherwise provided in this Section, Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount estimated by Lender to be sufficient to accumulate with Lender the entire sum required to pay, when due, the items marked "COLLECT" below, plus, at Lender's discretion, a contingency reserve of up to one-sixth of such estimate. Lender will not initially require Borrower to make Imposition Deposits with respect to any items marked "DEFERRED" or "NOT APPLICABLE" below.

[COLLECT] Hazard Insurance premiums or other insurance premiums required by Lender under Section 19

[COLLECT] Taxes

[DEFERRED] water and sewer charges (that could become a lien on the Mortgaged Property)

[DEFERRED] assessments or other charges (that could become a lien on the Mortgaged Property)

The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "Imposition Deposits." The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions." The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added.

Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other Imposition.

(b) Imposition Deposits shall be held by Lender or in a bank, credit union or other financial institution designated by Lender. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. As additional security for all of Borrower's obligations under this Instrument and the other Loan Documents (other than the Environmental Indemnity and any guaranty), Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits and all proceeds of, and all interest and dividends on, the Imposition Deposits. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, plus at Lender's discretion, a contingency reserve of up to one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, plus, at Lender's discretion, a contingency reserve of up to one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

(f) If Lender does not collect an Imposition Deposit with respect to an Imposition either marked "DEFERRED" in Section 7(a) or pursuant to a separate written waiver by Lender, then at least 30 days before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower must provide Lender with proof of payment of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked "DEFERRED" in such section, upon notice to Borrower, (i) if Borrower does not timely pay any of the Impositions as required by this Instrument, (ii) if Borrower fails to provide timely proof to Lender of such payment as required by this Instrument, or (iii) at any time from and after the occurrence of an Event of Default or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

(g) In the event of a Transfer prohibited by or requiring Lender's approval under Section 21, Lender's waiver or deferral of the collection of any Imposition Deposit in this Section 7 may be modified or rendered void by Lender at Lender's sole option and discretion by notice to Borrower and the transferee(s) as a condition of Lender's approval of such Transfer.

8. COLLATERAL AGREEMENTS. Mortgagor shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Mortgagor under each Collateral Agreement.

9. APPLICATION OF PAYMENTS. If at any time Lender receives, from Mortgagor or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Mortgagor's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS AND ORGANIZATIONAL DOCUMENTS.

(a) Mortgagor shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the

Mortgaged Property, fair housing, zoning and land use, and Leases. Mortgagor also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

(b) Mortgagor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10.

(c) Mortgagor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Mortgagor represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

(d) Mortgagor shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Mortgagor's formation, continued existence and good standing in the Property Jurisdiction. If Mortgagor is a housing cooperative corporation or association, Mortgagor shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal Revenue Code of 1986, as amended, or any successor statute thereto.

(e) If Mortgagor is not a natural person: (A) Mortgagor, and any Sub-Entity, shall maintain its existence as long as any portion of the Indebtedness remains unpaid; and (B) Mortgagor shall give written notice to Lender within ten (10) days after any dissolution or event triggering dissolution of Mortgagor or any Sub-Entity (which shall constitute an Event of Default under clause (A) of this sentence). As used in this Section 10, "Sub-Entity" shall include any managing or controlling entities, including any of the following that is not a natural person: (i) any manager or member of a limited liability company and any Sub-Entity thereof, (ii) any general partner of a general or limited partnership or limited liability partnership and any Sub-Entity thereof.

To the extent not in conflict with the provisions of this Instrument and the other Loan Documents, Mortgagor shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Mortgagor is a partnership), its by-laws (if Mortgagor is a corporation or housing cooperative corporation or association) or its operating agreement (if Mortgagor is a limited liability company, joint venture or tenancy-in-common). If Mortgagor is not a natural person, then: (A) Mortgagor shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Mortgagor's formation, continued existence and good standing in the state or commonwealth of Mortgagor's formation; (B) if the state or commonwealth of Mortgagor's formation is not the Property Jurisdiction, Mortgagor shall register or qualify as a foreign entity in the Property Jurisdiction and maintain such registration or qualification in good standing; (C) Mortgagor shall promptly provide Lender with copies of any amendments or supplements to Mortgagor's and any Sub-Entity's organizational documents; and (D) within ten (10) days after request by Lender Mortgagor shall furnish evidence satisfactory to Lender that Mortgagor and any Sub-Entity is/are in good standing in its/their state(s) or commonwealth(s) of organization, and, if different, the Property Jurisdiction.

11. USE OF PROPERTY. Unless required by applicable law, Mortgagor shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property was being used at the time this Instrument was executed, (b) convert any individual dwelling unit or common area to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property. Mortgagor acknowledges that Lender has not agreed to grant any partial releases or reconveyances of any portion of the Mortgaged Property, and that the release and reconveyance of the lien of this Instrument shall only be granted by Lender upon full repayment of the Indebtedness. Notwithstanding anything contained in this Section to the contrary, if Mortgagor is a housing cooperative corporation or association, Lender acknowledges and consents to Mortgagor's use of the Mortgaged Property as a housing cooperative.

12. PROTECTION OF LENDER'S SECURITY.

(a) If Mortgagor fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Mortgagor and to protect Lender's interest, including (1) payment of fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, (4) payment of amounts which Mortgagor has failed to pay under Sections 15 and 17, and (5) advances made by Lender to pay, satisfy or discharge any

obligation of Mortgagor for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien").

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION. Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time. Mortgagor shall within five (5) days after written request by Lender provide the name, phone number, address and email address of a contact person for Mortgagor or for a property management company managing the Mortgaged Property to arrange such inspection. Such contact person shall meet Lender's inspector(s) at the Mortgaged Property at the time specified by Lender and shall provide Lender's inspector(s) with access to all areas of the Mortgaged Property as Lender's inspector(s) may require to complete such inspection. At any time when an Event of Default has occurred and is continuing, the cost of such inspections shall be paid by Borrower upon written demand by Lender and if not paid within thirty days after such written demand, and, until paid, shall be added to and constitute a part of the Indebtedness as provided in Section 12.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Mortgagor shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) Mortgagor and any guarantor(s) (as applicable) shall furnish to Lender all of the following:

- (1) within 120 days after the end of each fiscal year of Mortgagor, a statement of income and expenses for Mortgagor's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Mortgagor relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Mortgagor relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 120 days after the end of each fiscal year of Mortgagor, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within 120 days after the end of each fiscal year of Mortgagor, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 120 days after the end of each fiscal year of Mortgagor, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Mortgagor and any Controlling Entity and the interest held by each, if Mortgagor or a Controlling Entity is a corporation, all officers and directors of Mortgagor and the Controlling Entity, and if Mortgagor or a Controlling Entity is a limited liability company, all managers who are not members;
- (5) upon Lender's request, quarterly income and expense statements for the Mortgaged Property;
- (6) upon Lender's request at any time when an Event of Default has occurred and is continuing, monthly income and expense statements for the Mortgaged Property;
- (7) within ten (10) days after Lender's request, a current monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from

tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;

(8) within ten (10) days after Lender's request, a balance sheet, a statement of income and expenses for Mortgagor and each guarantor(s) and a statement of changes in financial position of Mortgagor and each guarantor(s) for Mortgagor's or guarantor's most recent fiscal year;

(9) within ten (10) days after Lender's request, copies of all federal and state income tax returns filed by Mortgagor and any guarantor(s) (or, if Mortgagor or any guarantor is a "disregarded entity" for federal tax purposes, the federal and state returns filed by the owner of Mortgagor or such guarantor); and

(10) within ten (10) days after Lender's request, Mortgagor shall provide to Lender an executed IRS Form 4506-T (request for copy of tax return or transcript), in form and content acceptable to Lender, for Mortgagor and any guarantor(s).

(c) Each of the statements, schedules, documents, items and reports required by Section 14(b) shall be certified to be complete and accurate by each individual Mortgagor, an individual (or individuals) having authority to bind each entity Mortgagor and (for guarantor information and documents) each guarantor, and shall be in such form and contain such detail as Lender may reasonably require. Lender may, at Lender's discretion, require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) In the event Mortgagor or any guarantor(s) (as applicable) fails to deliver such statements, schedules, documents, items and reports within the time frames provided in Section 14(b) above, then such failure shall constitute an Event of Default and, in addition to any other remedies which may be available to Lender as a result of such Event of Default, interest on the outstanding principal balance of the Note shall accrue and be payable at the Default Rate provided for in the Note without the necessity of any notice and without grace period. Failure to provide any reports as required by this Section 14 shall constitute an Event of Default hereunder. The Default Rate of interest shall be in addition to any other remedies available to Lender as a result of Mortgagor's default. In no event shall the Default Rate of interest constitute a cure of Mortgagor's or any guarantor(s) (as applicable) default in failing to provide financial statements, nor limit Lender's remedies as a result of such default. In addition, if Mortgagor or any guarantor(s) (as applicable) fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), in addition to any other remedies which may be available to Lender as a result of such Event of Default, Lender shall have the right to have Mortgagor's or guarantor's (as applicable) books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Mortgagor shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Mortgagor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Mortgagor shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Mortgagor has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Mortgagor for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Mortgagor has failed to provide Lender with bills and premium notices as provided above.

(d) Mortgagor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Mortgagor notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Mortgagor deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Mortgagor furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Mortgagor to pay the contested Imposition.

(e) Mortgagor shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Mortgagor pays any Imposition directly, Mortgagor shall promptly furnish to Lender receipts evidencing such payments in accordance with Section 7(f).

16. LIENS; ENCUMBRANCES. Mortgagor acknowledges that the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument, the Approved Second Deed of Trust and the liens and encumbrances reflected on the Schedule of Title Exceptions) or on certain ownership interests in Mortgagor, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default under Section 21 of this Instrument. Any "Event of Default" under the Approved Second Deed of Trust shall constitute an Event of Default under this Instrument.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) shall, if required by Lender initially or at any later time upon written demand by Lender, provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, (f) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, and (g) if Mortgagor is a housing cooperative corporation or association, until the Indebtedness is paid in full Mortgagor shall not reduce the maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements below a level which is sufficient to pay all expenses of Mortgagor, including, without limitation, all operating and other expenses for the Mortgaged Property and all payments due pursuant to the terms of the Note and any Loan Documents. Mortgagor shall not (and shall not permit any tenant or other Person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty. At any time that a third party professional property manager is in place, Mortgagor shall provide to Lender an assignment of the property management agreement in form and content acceptable to Lender, consented to and signed by the property manager.

18. ENVIRONMENTAL HAZARDS. Mortgagor shall comply with all covenants, conditions, provisions and obligations of Mortgagor (as Indemnitor) under the Environmental Indemnity.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Mortgagor shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire, windstorm and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by Lender in order to determine whether such additional insurance is necessary or prudent, Borrower shall pay for all such documentation at its sole cost and expense. If any of the Improvements is located in an area that is either (i) identified by the Federal Emergency Management Agency (or any successor to that agency) ("FEMA") as an area having special flood hazards or (ii) designated by FEMA as Zone D, and if flood insurance is available in that area, Mortgagor shall insure such Improvements against loss by flood. All insurance required pursuant to this Section 19(a) shall be referred to as

"Hazard Insurance." All policies of Hazard Insurance must include a non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender.

(b) All premiums on insurance policies required under this Section 19 shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. Mortgagor shall deliver to Lender a legible copy of each insurance policy (or duplicate original) and Mortgagor shall promptly deliver to Lender a copy of all renewal and other notices received by Mortgagor with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Mortgagor shall deliver to Lender a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to Lender.

(c) Mortgagor shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require. All policies for general liability insurance must contain a standard additional insured provision, in favor of, and in a form approved by, Lender.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, shall be in such form and contain such endorsements as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Mortgagor shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Mortgagor to maintain.

(f) In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Lender. Mortgagor hereby authorizes and appoints Lender as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Mortgagor for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of the indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Mortgagor in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION.

(a) Mortgagor shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Mortgagor shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Mortgagor authorizes and appoints Lender as attorney in fact for Mortgagor to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Mortgagor hereby transfers and assigns to Lender all right, title and interest of Mortgagor in and to any award or payment with

respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN MORTGAGOR [RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL].

(a) "Transfer" means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. For purposes of defining the term "Transfer", the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

(b) "Transfer" does not include: (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the Bankruptcy Code, or (iii) a lien against the Mortgaged Property for local taxes and/or assessments not then due and payable.

(c) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of this Section 21 to the contrary:

- (i) a Transfer to which Lender has consented;
- (ii) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person (unless such death itself is an Event of Default under Section 22(o) of this Instrument);
- (iii) the grant of a leasehold interest in an individual dwelling unit, so long as such leasehold interest (A) is for a term of two years or less, (B) does not contain an option to purchase and (C) is otherwise in accordance with the terms of this Instrument;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (v) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 60 days of the date of creation;
- (vi) if Mortgagor is a housing cooperative, corporation or association, the Transfer of more than 49 percent of the shares in the housing cooperative or the assignment of more than 49 percent of the occupancy agreements or leases relating thereto by tenant shareholders of the housing cooperative or association to other tenant shareholders; and
- (vii) any Transfer of an interest in Mortgagor or any interest in a Controlling Entity (which, if such Controlling Entity were Mortgagor, would result in an Event of Default) listed in (A) through (F) below (a "Preapproved Transfer"), under the terms and conditions listed as items (1) through (7) below:
 - (A) a sale or transfer to one or more of the transferor's immediate family members; or
 - (B) a sale or transfer to any trust having as its sole beneficiaries the transferor and/or one or more of the transferor's immediate family members; or

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- (C) a sale or transfer from a trust to any one or more of its beneficiaries who are immediate family members of Mortgagor or a Controlling Entity; or
 - (D) the substitution or replacement of the trustee of any trust with a trustee who is an immediate family member of the transferor; or
 - (E) a sale or transfer to an entity owned and controlled by the transferor or the transferor's immediate family members; or
 - (F) a sale or transfer to an individual or entity that has an existing interest in Mortgagor or in a Controlling Entity.

Preapproved Transfer Terms and Conditions:

- (1) Mortgagor shall provide Lender with prior written notice of the proposed Preapproved Transfer, which notice must be accompanied by a non-refundable review fee in the amount of **\$500.00**.
 - (2) For the purposes of these Preapproved Transfers, a transferor's immediate family members will be deemed to include a spouse, parent, child or grandchild of such transferor.
 - (3) Either directly or indirectly, the Initial Owners shall retain at all times not less than Controlling Interest in Mortgagor and a managing interest in Mortgagor.
 - (4) At the time of the proposed Preapproved Transfer, no Event of Default shall have occurred and be continuing and no event or condition shall have occurred and be continuing that, with the giving of notice or the passage of time, or both, would become an Event of Default.
 - (5) Lender shall be entitled to collect all costs, including the cost of all title searches, title insurance and recording costs, and all Attorneys' Fees and Costs.
 - (6) Lender shall not be entitled to collect a transfer fee as a result of these Preapproved Transfers.
 - (7) In the event of a Transfer prohibited by or requiring Lender's approval under this Section 21, this Section (c)(vii) may be modified or rendered void by Lender at Lender's option by notice to Mortgagor and the transferee(s), as a condition of Lender's consent.
- (d) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, provided that Mortgagor has notified Lender in writing within 30 days following the occurrence of any of the following, and such Transfer does not constitute an Event of Default under any other Section of this Instrument:
- (i) a change of Mortgagor's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;
 - (ii) a change of the form of Mortgagor not involving a transfer of Mortgagor's assets and not resulting in any change in liability of any Initial Owner, provided that: (A) UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender, (B) Lender has been provided, in advance, for Lender's review and approval, all proposed filings, amendments and other documents pertaining to such change in form, and (C) Borrower shall pay for attorneys' fees, and other out of pocket costs of Lender for the review of such documents and any filings, including any title endorsement costs if Lender in its discretion requires an endorsement or endorsements to Lender's title policy, the merger of Mortgagor with another entity when Mortgagor is the surviving entity;
 - (iii) [intentionally omitted]; and
 - (iv) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses;
 - (v)

including Attorneys' Fees and Costs, incurred by Lender in connection with reviewing Mortgagor's request.

- (e) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:
- (i) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property (including without limitation the creation or existence of any Lien as provided in Section 16 of this Instrument);
 - (ii) if Mortgagor is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Mortgagor that would cause the Initial Owners of Mortgagor to own less than a Controlling Interest of all limited partnership interests in Mortgagor;
 - (iii) if Mortgagor is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Mortgagor;
 - (iv) if Mortgagor is a limited liability company, (A) a Transfer of any membership interest in Mortgagor which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Mortgagor, (B) a Transfer of any membership or other interest of a manager in Mortgagor that results in a change of manager, or (C) a change of a nonmember manager;
 - (v) if Mortgagor is a corporation, (A) the Transfer of any voting stock in Mortgagor which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Mortgagor or (B) if the outstanding voting stock in Mortgagor is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
 - (vi) if Mortgagor is a trust, (A) a Transfer of any beneficial interest in Mortgagor which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Mortgagor, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Mortgagor; and
 - (vii) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Mortgagor, would result in an Event of Default under any of Sections 21(e)(i) through (vi) above.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(f) Lender shall not unreasonably withhold or delay its consent, one time only, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Mortgagor has satisfied each of the following requirements:

- (i) the submission to Lender in writing of all information required by Lender to make the determination required by this Section 21(f), which written submission shall be made at least sixty (60) days before the date of the proposed Transfer, which date must be at least one year after the date of recordation of this Instrument;
- (ii) the absence of any Event of Default;
- (iii) the transferee (A) otherwise meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on similar properties; and (B) the transferee's organization, credit and experience in the management of similar properties are deemed by Lender, in its discretion, to be appropriate to the overall structure and documentation of the existing financing;
- (iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, occupancy, net operating income and the collection of reserves that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on similar properties;
- (v) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of Lender's then-standard assumption agreement that, among other things, requires the transferee to perform all obligations of Borrower or Other Fee Owner, as applicable, set forth in the

Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, (B) if Lender requires, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender, and (C) the transferee executes such additional Collateral Agreements as Lender may require;

- (vi) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;
- (vii) Execution of such documents by Mortgagor, the proposed transferee, and guarantors, if any, as Lender may require (which documentation shall affirm that Lender's approval of the proposed transfer shall not relieve or release Mortgagor or any guarantor from liability under the Note, this Instrument or any guaranty);
- (viii) Receipt of such title policy endorsements and/or other title assurances, if any, as Lender may require in its discretion; and
- (ix) Lender's receipt of all of the following at the time of application for Lender's approval:
 - (A) a nonrefundable review fee in the amount of \$500.00;
 - (B) a transfer fee in an amount equal to **one percent (1%)** of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer (which amount, less any unpaid sums due under (ix)(C) below, shall be refundable in the event the proposed transfer and assumption is not approved by Lender); and
 - (C) the amount of Lender's out-of-pocket costs (including without limitation reasonable attorneys' fees, title charges, documentation charges, appraisal fees, property inspection fees and fees for environmental assessments) incurred in reviewing the Transfer request.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Mortgagor to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;
- (b) any failure by Mortgagor to maintain the insurance coverage required by Section 19 or to provide any financial information or documents required by Section 14;
- (c) [Intentionally Omitted];
- (d) fraud or material misrepresentation or material omission by Mortgagor, any of its officers, directors, trustees, general partners or managers or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;
- (e) any Event of Default under Section 21;
- (f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;
- (g) any event or condition occurs that results in any indebtedness secured by a mortgage, deed of trust or deed to secure debt on the Mortgage Property (including the indebtedness secured by the Approved Second Deed of Trust) becoming due prior to its scheduled maturity or that enables or permits (after the lapse of any applicable cure period) the holder of such indebtedness or any trustee or agent on its behalf to cause such indebtedness to become due prior to its scheduled maturity;
- (h) any failure by Mortgagor to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Mortgagor. However, no such notice or grace period shall apply in the case of any such failure which could, in Lender's

judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Mortgagor or any guarantor(s) to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) should any representation or warranty contained in this Instrument, the Borrower Certificate, any other Loan Document, or any other document submitted by Mortgagor to Lender be or become false or misleading in any material respect;

(l) if the Mortgaged Property is subject to any covenants, conditions and/or restrictions, land use restriction agreements or similar agreements, Mortgagor fails to perform any of its obligations under any such agreement as and when required, and such failure continues beyond any applicable cure period;

(m) Mortgagor or any guarantor makes a general assignment for the benefit of creditors, voluntarily files for bankruptcy protection under the Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Mortgagor or any guarantor by any creditor (other than Lender) of Mortgagor or any guarantor pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights to which Mortgagor or any guarantor voluntarily becomes subject, and is not dismissed or discharged within 60 days after filing;

(n) Mortgagor, any member, manager, officer, shareholder, general partner or trustee of Mortgagor, any guarantor or any member, manager, officer, shareholder, general partner or trustee of any guarantor, purports to revoke or dispute the validity of, or Mortgagor's or any guarantor's liability under, any of the Loan Documents or any guaranty; and

(o) Mortgagor (if Mortgagor is a natural person) or any member, shareholder, partner or trustee of Mortgagor (if such member, shareholder, partner or trustee is a natural person), or any guarantor who is a natural person, dies or becomes incompetent (unless, in the case of the death or incapacity of any member, shareholder or partner of Mortgagor, the transfer of such member's, shareholder's or partner's interest in Mortgagor would not have been an Event of Default under Section 21); provided, however, that in the event of the death of any such person, Mortgagor (or such deceased person's executor, administrator or successor trustee) may within thirty (30) days after such death, present to Lender credit application(s) for proposed substitute borrower(s), mortgagor(s), member(s), shareholder(s), partner(s), trustee(s) or guarantor(s) on Lender's required forms, together with such supporting financial information as Lender may require, and in such event Lender, in its sole, absolute and unfettered discretion after review of such application(s) and supporting information, may waive such Event of Default, and provided further that such waiver may, in the case of the death or incompetence of Mortgagor or any guarantor, require, as a condition of such waiver, that one or more substitute borrowers, mortgagors or guarantors assume unconditionally the obligations of such deceased person under the Loan Documents and/or guaranty, in a manner satisfactory to Lender. In such event Mortgagor or the successor Mortgagor(s) shall execute such documentation as Lender may require and shall pay all of Lender's Attorneys' Fees and Costs and other out of pocket costs in connection with such assumption.

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Mortgagor, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy.

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The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Mortgagor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

26. WAIVER OF STATUTE OF LIMITATIONS. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

27. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Mortgagor and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. FURTHER ASSURANCES. Mortgagor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents, or as may be necessary or requested by Lender in connection with the funding, servicing or administration of the loan secured by this Instrument.

29. ESTOPPEL CERTIFICATE. Within 10 days after a request from Lender, Mortgagor shall deliver to Lender a written statement, signed and acknowledged by Mortgagor, certifying to Lender or any Person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Mortgagor is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Mortgagor is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Mortgagor against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Mortgagor agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have non-exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Mortgagor irrevocably consents to service, jurisdiction, and

venue of such courts for any such litigation and waives any other venue, or defense to venue to which it might be entitled by virtue of domicile, habitual residence, inconvenient forum or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in paragraph A of this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER. The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Mortgagor. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

33. [Intentionally Omitted]

34. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Mortgagor. However, a Transfer not permitted by Section 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY. If more than one Person signs this Instrument as Mortgagor, the obligations of such Persons under this Instrument, the Note and other Loan Documents shall be joint and several.

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Mortgagor shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Mortgagor.

(b) No creditor of any party to this Instrument and no other Person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Mortgagor for the payment of the Indebtedness, (2) Mortgagor shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; ENTIRE AGREEMENT; AMENDMENTS. The parties intend that the provisions of this Instrument and all other Loan Documents shall be legally severable. If any term or provision of this Instrument, or any other Loan Document, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Instrument or of such other Loan Document shall not be affected thereby, and each term and provision shall be valid and be enforceable to the fullest extent permitted by law. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

38. CONSTRUCTION. The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation.

as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation." The use of one gender includes the other gender, as the context may require. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document in this Instrument shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument or any other Loan Document), and (b) any reference in this Instrument to any Person shall be construed to include such Person's successors and assigns.

39. LOAN SERVICING. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

40. DISCLOSURE OF INFORMATION. Lender may furnish information regarding Mortgagor or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of similar mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender. Mortgagor irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION. If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances under Section 12, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances shall be deemed to have been advanced by Lender at Mortgagor's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

43. [Intentionally Omitted]

44. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand. After giving Mortgagor notice of the occurrence of an Event of Default in the manner prescribed by Washington law, Lender may invoke the power of sale and any other remedies permitted by Washington law or provided in this Instrument or in any other Loan Document. Mortgagor acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Mortgagor has the right to bring an action to assert that an Event of Default does not exist or to raise any other defense Mortgagor may have to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of the Event of Default and of Lender's election to cause the Mortgaged Property to be sold. Trustee and Lender shall give such notices as Washington law may require to Mortgagor and to all other persons entitled to receive notice under Washington law. After the lapse of such time as may be required by Washington law, Trustee shall sell the Mortgaged Property according to Washington law. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Mortgaged Property for a period or periods not exceeding a total of 30 days by public announcement at the time and place fixed in the notice of sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Within a reasonable time after the sale, Trustee shall deliver to the purchaser at the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in the recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, Attorneys'

Fees and Costs and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the clerk of the superior court of the county in which the sale took place.

45. FIXTURE FILING. This Instrument is also a fixture filing under the Uniform Commercial Code of Washington.

46. RECONVEYANCE. Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall deliver this Instrument and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the Person or Persons legally entitled thereto. Such Person or Persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

47. SUBSTITUTE TRUSTEE. In accordance with Washington law, Lender may from time to time appoint a successor trustee to any Trustee appointed under this Instrument who has ceased to act. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the predecessor Trustee and by applicable law.

48. USE OF PROPERTY. The Mortgaged Property is not used principally for agricultural or farming purposes.

49. INTERPRETATION. It is the intention of Mortgagor and Lender that if any provision of this Instrument or any other Loan Document is capable of two (2) constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. Mortgagor acknowledges that Lender has attempted in good faith to assure that this Instrument, the Note and all other Loan Documents are in compliance with applicable laws of the Property Jurisdiction and federal laws. Nevertheless, in the event that any provision of this Instrument, the Note or any other Loan Document is not in compliance with any such laws, then the non-complying provision shall be deemed to be deleted or modified to the extent necessary to assure legal compliance. Similarly, in the event any language or disclosure required by applicable laws of the Property Jurisdiction is not contained in the Loan Documents, then the Loan Documents shall be deemed to have been supplemented to add such language or disclosure, or, at Lender's option, Lender may provide such additional language or disclosure. In either event, such legal requirement shall thereby be satisfied and such noncompliance shall be deemed to have been cured for all purposes. Within ten (10) days after written request by Lender, Mortgagor agrees to execute such documentation as Lender may require to cure any legal compliance issues or deficiencies in the Loan Documents.

50. FUTURE ADVANCES. In addition to the Indebtedness, this Instrument shall (to the extent allowed by applicable law) also secure payment of the principal, interest and other charges due on all other future loans or advances made by Lender to Mortgagor (or any successor in interest to Mortgagor as the owner of all or any part of the Mortgaged Property) when the promissory note evidencing such loan or advance specifically states that it is secured by this Instrument ("Future Advances"), including all extensions, renewals and modifications of any such Future Advances.

51. AGREEMENT TO PROVIDE ADDITIONAL DOCUMENTS. Mortgagor agrees to execute and acknowledge such additional documents as may be necessary or desirable in order to carry out the intent and purpose of this Instrument and the other Loan Documents, to confirm or establish the lien hereof, or to correct any clerical errors or legal deficiencies. Without limiting the foregoing, Borrower agrees to execute a replacement Note in the event the Note is lost or destroyed and to execute an amended or corrected and restated substitute Note to correct any clerical or other errors which may be discovered in the original Note. Failure of Mortgagor to comply with any request by Lender pursuant to this Section or under Section 28 above within ten (10) days after written request by Lender shall constitute a material Event of Default hereunder.

52. EXECUTION IN COUNTERPARTS. This Instrument may be executed in multiple counterparts, and the separate signature pages and notary acknowledgments may then be combined into a single original document for recordation.

53. PAYMENT OF CLOSING COSTS. If for any reason the escrow or closing agent fails to reserve and pay for all of Lender's fees, legal, documentation, appraisal, title, recording and other closing costs incurred in connection with the closing and funding of the Loan, then Borrower shall pay or reimburse Lender for any such unpaid fees or costs within ten (10) days after written demand by Lender itemizing the unpaid fees and costs. Failure of Borrower to so pay or reimburse Lender for any such unpaid fees and costs within ten (10) days after written demand by Lender shall constitute an Event of Default and, without limiting any other remedies of Lender, Lender may immediately institute the Default Rate under the Note until such amounts are received by Lender.

54. COVENANTS OF OTHER FEE OWNER. In consideration of Indebtedness, Other Fee Owner agrees as follows:

(a) At any time and in such manner, upon such terms and at such times as it considers best and with or without notice to Other Fee Owner, Lender may alter, compromise, accelerate, extend, change the time or manner for the payment of

the indebtedness, increase or reduce the rate of interest thereon, release or add any one or more obligors, guarantors, endorsers, accept additional or substituted security therefor, or release or subordinate any security therefor.

(b) Other Fee Owner waives any right to require Lender to proceed against Borrower or any other Person to proceed against or exhaust any other security held by it at any time or to pursue any other remedy in its powers and Other Fee Owner agrees that Lender shall not be obligated to resort to any other security, including security given by Borrower, with any priority in any particular order or at all even if such action destroys, alters or otherwise impairs subrogation rights of Other Fee Owner or the rights of Other Fee Owner to proceed against Borrower for reimbursement, or both.

(c) Other Fee Owner waives and agrees not to assert or take advantage of:

- (i) the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby;
- (ii) any defense or right based upon election of remedies by Lender, including without limitation, an election to proceed by non-judicial rather than judicial foreclosure, even if such election destroys, alters or otherwise impairs subrogation rights of Other Fee Owner or the right of Other Fee Owner to proceed against Borrower for reimbursement, or both; and
- (iii) any defense or right based upon the acceptance by Lender or an affiliate of Lender of a deed in lieu of foreclosure, without extinguishing the debt, even if such acceptance destroys, alters or otherwise impairs subrogation rights of Other Fee Owner or the right of Other Fee Owner to proceed against Borrower for reimbursement, or both.

(d) Other Fee Owner, by execution hereof, represents to Lender that the relationship between Other Fee Owner and Borrower is such that Other Fee Owner has access to all relevant facts and information concerning the debt and Borrower and that Lender can rely upon Other Fee Owner having such access. Other Fee Owner waives and agrees not to assert any duty on the part of Lender to disclose to Other Fee Owner any facts that it may now or hereafter know about Borrower, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Other Fee Owner intends to assume or has reason to believe that such facts are unknown to Other Fee Owner or has a reasonable opportunity to communicate such facts to Other Fee Owner. Other Fee Owner is fully responsible for being and keeping informed of the financial condition of Borrower and all circumstances bearing on the risk of non-payment of any indebtedness hereby secured.

(e) Other Fee Owner waives demand, protest and notice of any kind including, without limiting the generality of the foregoing notice of the existence, creation or incurring of new or additional indebtedness or of any action or non-action on the part of Borrower, Lender, any endorser, any creditor of Borrower or Other Fee Owner under this or any other instrument, or any other Person whatsoever in connection with any obligation or evidence of indebtedness held by Lender as collateral or in connection with any indebtedness secured hereby.

(f) Until all Indebtedness of Borrower to Lender has been paid in full, Other Fee Owner waives the right of subrogation and waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower and any benefit of, and any right to participate in, any security now or hereafter held by Lender.

(g) With or without notice to Other Fee Owner, Lender, in its sole discretion, at any time and from time to time, in such manner and upon such terms as it considers best, may (a) apply any and all payments or recoveries from Borrower, from Other Fee Owner, from any guarantor or endorser, or realized from any security, in such manner, order and priority as Lender elects, to any indebtedness of Borrower, and (b) refund to Borrower any payment received by Lender upon any indebtedness hereby secured and payment of the amount refunded shall be fully secured hereby.

(h) No exercise or nonexercise by Lender of any right hereby given it, no dealing by Lender with Borrower or any other Person, and no change, impairment or suspension of any right or remedy of Lender shall in any way affect any of the obligations of Other Fee Owner hereunder or give Other Fee Owner any recourse against Lender.

(i) If any term or provision of this Instrument, or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable the remainder of this Instrument, or the application of such terms or provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Instrument shall be valid and enforceable to the fullest extent permitted by law.

(j) Other Fee Owner is executing this Instrument as an accommodation to Borrower only in order for Borrower to obtain the loan secured hereby. In no event shall Other Fee Owner be liable in any way for repayment of any of Borrower's obligations to Lender, except to the extent set forth in a separate guaranty made by Other Fee Owner in favor of Lender.

(k) In the event any other terms or provisions of this Instrument differ from or are in any way inconsistent with the terms and provisions of this Section 54, the terms and provisions of this Section 54 shall be deemed to govern the obligations, rights and relationship of the parties.

55. OTHER FEE OWNER ACKNOWLEDGMENT. Other Fee Owner represents that it has read and understands the provisions of all Loan Documents and consents to all of the terms contained therein.

56. BALLOON PAYMENT NOTICE. The Note secured hereby provides for a balloon payment of the entire indebtedness upon the Maturity Date of the Note.

57. SCOPE OF SECURED OBLIGATIONS. For the avoidance of doubt, this Instrument secures only the indebtedness and not any amounts due under the Environmental Indemnity or any guaranty.

58. WAIVER OF TRIAL BY JURY. MORTGAGOR AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS MORTGAGOR AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

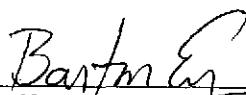
NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

ATTACHED EXHIBIT. The following Exhibit is attached to this Instrument:
Exhibit "A" Description of the Land

THIS DEED OF TRUST SECURES A VARIABLE RATE PROMISSORY NOTE. THIS DEED OF TRUST IS A FIRST DEED OF TRUST. EXCEPT FOR THE APPROVED SECOND DEED OF TRUST, NO FURTHER ENCUMBRANCES MAY BE RECORDED AGAINST THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER. FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE AN EVENT OF DEFAULT AND AT LENDER'S OPTION THE LOAN SHALL IMMEDIATELY BECOME DUE AND PAYABLE. CONSENT TO ONE FURTHER ENCUMBRANCE SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO REQUIRE SUCH CONSENT TO FUTURE OR SUCCESSIVE ENCUMBRANCES.

IN WITNESS WHEREOF, Borrower and Other Fee Owner have signed and delivered this Instrument under seal (where applicable) or have caused this Instrument to be signed and delivered by their duly authorized representatives under seal (where applicable). Where applicable law so provides or allows, Borrower and Other Fee Owner intend that this Instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:


BARTON ENG (SEAL)


WENDEE ENG (SEAL)

[Other Fee Owner's signature on next page.]

OTHER FEE OWNER:

KNG@BURLINGTON, LLC,
a Washington limited liability company

By: W. Walton Liu, Manager
WALTON LIU, Manager

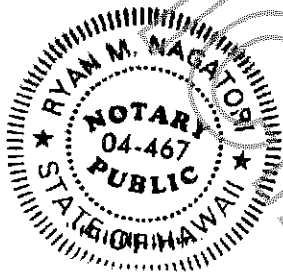
(SEAL)

State of Hawaii) ss.

County of Honolulu)

On this MAR 26 2015 day of _____ in the year 2015, before me personally appeared **BARTON ENG**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

WITNESS my hand and official seal.



[Signature]

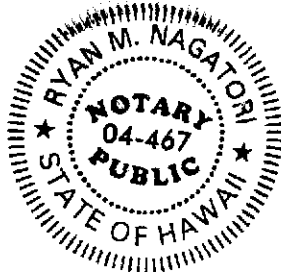
Signature of Notary Public

Ryan M. Nagatori

Expiration Date: August 29, 2016

Other Required Information (Printed Name of the Notary, Residence, etc.)

Place Notary Seal and /or Any Stamp Above



NOTARY CERTIFICATE, STATE OF HAWAII
Doc. Description/ID: DEED OF TRUST

Doc. Date: 3/26/15 Pages: 20

Notary Name: RYAN M. NAGATORI Circuit

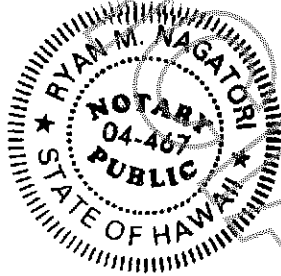
Notary Signature [Signature] Cert. Date MAR 26 2015

State of Hawaii) ss.

County of Honolulu)

On this MAR 26 2015 day of _____ in the year **2015**, before me personally appeared **WENDEE ENG**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

WITNESS my hand and official seal.

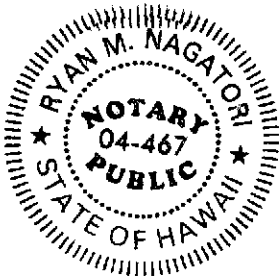


Signature of Notary Public

Ryan M. Nagatori
Expiration Date: August 29, 2016

Other Required Information (Printed Name of the Notary, Residence, etc.)

Place Notary Seal and /or Any Stamp Above

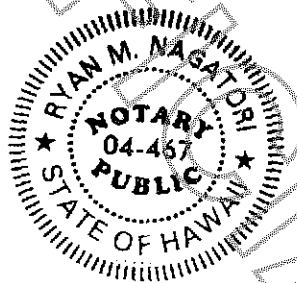


NOTARY CERTIFICATE, STATE OF HAWAII
Doc. Description/ID: WEDD OF TRUST
Doc. Date: 3/26/15 Pages: 50
Notary Name: RYAN M. NAGATORI Circuit 18
Notary Signature _____ Cert. Date MAR 26 2015

State of Hawaii) ss.

County of Honolulu)

On this MAR 26 2015 day of _____ in the year **2015**, before me personally appeared **WALTON LIU**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



WITNESS my hand and official seal.

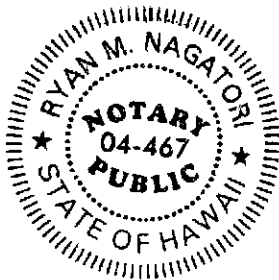
Signature of Notary Public

Ryan M. Nagatori

Expiration Date: August 29, 2016

Other Required Information (Printed Name of the Notary, Residence, etc.)

Place Notary Seal and /or Any Stamp Above



NOTARY CERTIFICATE, STATE OF HAWAII

Doc. Description/ID: WAL OF TRST

Doc. Date: 3/26/15 Pages: 50

Notary Name: RYAN M. NAGATORI Circuit: 1st

Notary Signature: [Signature] Cert. Date: 3/25/15

EXHIBIT "A"
DESCRIPTION OF THE LAND

THE LAND REFERRED TO HEREIN IS SITUATED IN SKAGIT COUNTY, STATE OF WASHINGTON, AND IS DESCRIBED AS FOLLOWS:

Lots 14 through 18, inclusive, Block 33, "AMENDED PLAT OF BURLINGTON", as per plat recorded in Volume 3 of Plats, page 17, records of Skagit County, Washington.

APN: 4076-033-018-0002, P71518

PROPERTY ADDRESS: 1133 EAST FAIRHAVEN AVENUE, BURLINGTON, WASHINGTON 98233