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Skagit County Auditor
9/9/2015 Page

\$187.00
1 of 43 12:40PM

Document Title:

Leasehold Deed of Trust and Fixture Filing

Reference Number : N/A

Grantor(s):

☐ additional grantor names on page ____.

1. Atlas Tower Holdings, LLC

2.

Grantee(s):

☐ additional grantee names on page ____.

1. First Western Trust Bank (Lender)

2. Fidelity National Title Insurance Company (Trustee)

Abbreviated legal description:

☒ full legal on page(s) 32.

Section 30; Township 34 N; Range 4 E, W.M.

32 on A-1

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____.

340430-2-005-0001

When Recorded Return To:

Moye White LLP
1400 16th Street, 6th Floor
Denver, Colorado 80202
Attn: Patricia J. Rogers, Esq.

BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS DEED OF TRUST PROVIDE FOR THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST AND (2) A BALLOON PAYMENT AT MATURITY.

**LEASEHOLD DEED OF TRUST AND FIXTURE FILING
(With Assignment of Leases and Rents and Security Agreement)**

Grantor (Borrower): ATLAS TOWER HOLDINGS, LLC
Grantee (Lender): FIRST WESTERN TRUST BANK
Grantee (Trustee): FIDELITY NATIONAL TITLE INSURANCE COMPANY
Legal Description: 16325 Dike Rd., Mt. Vernon, WA 98273, with a parcel number of P29209 and an assessor legal description of DK 3 N 607FT OF SE1/4 NW1/4 W OF BRITTS SLO LESS TAX 123 124 128 129 & TR TOGETHER WITH THAT PORTION OF THE SE1/4 NW1/4 OF SECTION 30, TWP 34, RNG 4 DESCRIBED AS FOLLOWS; BEGINNING AT A POINT ON THE WEST LINE OF SAID SUBDIVISION WHICH IS 485.6 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 253.4 FEET; THENCE EAST TO THE CENTER OF BRITT'S SLOUGH; THENCE SOUTHERLY ALONG THE CENTER OF BRITT'S SLOUGH TO A POINT EAST OF THE POINT OF BEGINNING; THENCE WEST TO THE POINT OF BEGINNING.
Additional Legal(s) on Exhibit A
Assessor's Tax Parcel ID Numbers: 340430-2-005-0001

GRANTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER: 20131006656

THIS LEASEHOLD DEED OF TRUST AND FIXTURE FILING (With Assignment of Leases and Rents and Security Agreement) (as it may be amended and modified from time to time, the "**Deed of Trust**") is made as of July 15, 2015, by and between ATLAS TOWER HOLDINGS, LLC, a Colorado limited liability company (the "**Grantor**"), whose mailing address is 4450 Arapahoe Ave., Suite 100, Boulder, CO 80303; FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation ("**Trustee**"), whose mailing address is 3500 188th St. SW, Suite 300, Lynnwood, WA 98037 and FIRST WESTERN TRUST BANK, a Colorado banking corporation ("**Lender**"), whose mailing address is 1155 Canyon Blvd, Suite 300, Boulder, CO 80302.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Grantor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF

UNRECORDED
TOGETHER WITH

SALE, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, all of Grantor's right, title, interest and estate in and to the Primary Lease, as such term is defined on Exhibit C, and Grantor's current and future interest, subject to the terms of the Primary Lease, in and to that certain real property (the "**Property**") located in the County of Skagit, State of Washington more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Premises**");

TOGETHER WITH any interest of Grantor in all buildings and other improvements now or hereafter erected on the Premises including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "**Improvements**"), all of which shall be deemed and construed to be a part of the Premises;

TOGETHER WITH any interest of Grantor in all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements, subject to the terms and provisions of Article II of this Deed of Trust with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or portions thereof, granted by Grantor, and further subject to the right, power and authority hereinafter given to Grantor to collect and apply such rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Grantor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any truckage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Grantor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Grantor thereunder including, without limitation, all rights of Grantor against the Guarantors (as defined in the Credit Agreement), all cash or security deposits, advance rentals, and deposits or payments of similar nature subject to the terms and provisions of Article II of this Deed of Trust;

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Grantor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Grantor in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Grantor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Grantor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Grantor, and (v) all

proceeds thereof (such personal property and proceeds are referred to herein collectively as the "**Personal Property**");

TOGETHER WITH all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Grantor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH all proceeds of the foregoing.

The entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "**Trust Estate**."

FOR THE PURPOSE OF SECURING (in such order of priority as Lender may elect) the following (the "**Obligations**");

(a) payment of indebtedness in the total principal amount of up to Three Million and No/100 Dollars (\$3,000,000.00) ("**Loan**") with interest thereon, evidenced by that certain Secured Promissory Note, dated November 26, 2014, (as it may be amended, modified, extended, restated and/or renewed from time to time, the "**Note**") executed by Grantor, pursuant to that certain Credit Agreement between Grantor and Lender, dated November 26, 2014 (as it may be amended, modified, extended, restated and/or renewed from time to time, the "**Credit Agreement**");

(b) payment of all sums advanced by Lender to protect the Trust Estate, with interest thereon equal to the Default Rate (as defined in the Credit Agreement) (which rate of interest is hereinafter referred to as the "**Agreed Rate**");

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Grantor, or its successors or assigns, by Lender, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

(d) performance of every obligation of Grantor contained in the Loan Documents (as defined below);

(e) performance of every obligation of any Grantor contained in any agreement, document, or instrument now or hereafter executed by any Grantor reciting that the obligations thereunder are secured by this Deed of Trust, including, without

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limitation, all other obligations, agreements or indebtedness between any Grantor and any affiliate of Lender;

(f) for the benefit of Lender, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected;

(g) all other present or future, direct or indirect, absolute or contingent, liabilities, obligations and indebtedness of Grantor to Lender, pursuant to any other loan or credit agreement, promissory note, deed of trust, or other agreement, and all further renewals, extensions, modifications, and restatements of the foregoing, whether or not Grantor executed any extension agreement or renewal instruments.

This Deed of Trust, the Leasehold Addendum to Deed of Trust which is attached hereto as Exhibit C and made a part hereof, the Note, the Credit Agreement, the Guaranty (as defined in the Credit Agreement), and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents." Any term used or defined in the Uniform Commercial Code of the State of Washington as in effect from time to time, or under the Uniform Commercial Code, enforced from time to time, in any other state to the extent the same is the applicable law, ("Uniform Commercial Code"), and not defined in this Deed of Trust, has the meaning given to the term in the Uniform Commercial Code, when used in this Deed of Trust. Any term used but not defined in this Deed of Trust shall have the same meaning as defined in the Credit Agreement.

GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I COVENANTS AND AGREEMENTS OF GRANTOR

1.01 Payment and Performance of Secured Obligations. Grantor shall pay when due and/or perform each of the Obligations.

1.02 Maintenance, Repair, Alterations. Grantor shall keep the Trust Estate in good condition and repair. Grantor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Lender. Grantor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Grantor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Grantor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Grantor shall perform its obligations under each Lease. "Requirement" and "Requirements" mean, respectively, each and all obligations

and requirements now or hereafter in effect by which Grantor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Trust Estate, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Grantor is a party or by which Grantor or the Trust Estate is bound or affected, and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Grantor is a party or by which Grantor or the Trust Estate is bound or affected).

1.03 Required Insurance. Grantor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Trust Estate, at no expense to Trustee or Lender, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Lender covering such casualties, risks, perils, liabilities and other hazards as is required under the Credit Agreement. All such policies of insurance required by the terms of this Deed of Trust or the Credit Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor or any party holding under Grantor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Grantor.

1.04 Delivery of Policies, Payment of Premiums.

(a) At Lender's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Lender in form satisfactory to Lender or shall name Lender as an additional insured. Grantor shall furnish Lender with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Lender consents, Grantor may provide any of the required insurance through blanket policies carried by Grantor and covering more than one location, or by policies procured by a tenant or other party holding under Grantor; provided, however, all such policies shall meet the requirements referred to in Section 1.03. At least thirty (30) days prior to the expiration of each required policy, Grantor shall deliver to Lender evidence reasonably satisfactory to Lender of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Grantor and insurance company, such policies will not be cancelled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Lender.

(b) In the event Grantor fails to obtain, maintain, or deliver to Lender the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Lender may, at Lender's election, but without any obligation so to do, procure such

insurance or single-interest insurance for such risks covering Lender's interest, and Grantor will pay all premiums thereon promptly upon demand by Lender, and until such payment is made by Grantor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Lender, Grantor shall deposit with Lender in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "**Insurance Impounds**"). In such event Grantor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Lender. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Lender shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Lender shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Grantor set forth in Section 1.03 to obtain and maintain insurance. Lender may commingle Insurance Impounds with its own funds, and Grantor shall not be entitled to interest thereon. Lender may reserve for future payments of premiums such portion of Insurance Impounds as Lender in its absolute and sole discretion deems proper. If Grantor fails to deposit with Lender sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand with interest from the date advanced at the Agreed Rate, or at the option of Lender the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Lender may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Lender may, at any time, at Lender's option, apply any Insurance Impounds or Impositions Impounds under this Section 1.04 or Section 1.08, any funds paid as Rents, and any other funds of Grantor held by Lender to payment of any of the Obligations, in such manner and order as Lender may elect, notwithstanding that such Obligations may not yet be due.

1.05 Casualties; Insurance Proceeds.

(a) Grantor shall give prompt written notice thereof to Lender after the happening of any casualty to or in connection with the Trust Estate or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Lender, and Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. If Grantor receives any proceeds of insurance resulting from such casualty, Grantor shall promptly pay over such proceeds to Lender. All proceeds of insurance will be applied by Lender to payment of the Obligations in such order as Lender shall determine.

(b) Grantor shall not be excused from repairing or maintaining the Trust Estate as provided in Section 1.02 hereof or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Grantor or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such default or notice of default.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Grantor in and to all policies of insurance required by Section 1.03 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.07 Indemnification, Subrogation; Waiver of Offset.

(a) If Lender is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Grantor, then Grantor shall indemnify, defend and hold Lender harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Lender as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Lender may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Grantor, Grantor shall pay Lender reasonable attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Grantor by reason of its breach.

(b) Grantor waives any and all right to claim or recover against Lender, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property or the property of others under Grantor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Grantor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to

Lender, or any action taken with respect to this Deed of Trust by any trustee or receiver of Lender, or by any court, in any such proceeding; (v) any claim that Grantor has or might have against Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms of the Loan Documents or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Grantor. "**Person**" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.08 Impositions.

(a) Grantor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever (including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "**Imposition**" and collectively as "**Impositions**"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Grantor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Lender and measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term Impositions as defined in Section 1.08(a) and Grantor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Grantor fails to pay such Impositions prior to delinquency, Lender may, at its option, declare all or part of the Obligations, immediately due and payable. If Grantor is prohibited by law from paying such Impositions, Lender may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Grantor.

(c) Subject to the provisions of Section 1.08(d) and upon request by Lender, Grantor shall deliver to Lender within thirty (30) days after the date upon which any Imposition is due and payable by Grantor official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

(d) Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Grantor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.08, unless Grantor has given prior written notice to Lender of Grantor's intent to so contest or object to an Imposition, and unless, in Lender's absolute and sole discretion, (i) Grantor shall demonstrate to Lender's satisfaction that the proceedings to be initiated by Grantor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender, or (iii) Grantor shall demonstrate to Lender's satisfaction that Grantor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Lender, Grantor shall pay to Lender an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Lender, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Lender, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "**Impositions Impounds**"). In such event, Grantor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Lender. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Lender shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Lender may notify Grantor and upon such notice Grantor shall deposit immediately an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this Section 1.08(e). Lender may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Lender may reserve for future payment of Impositions such portion of Impositions Impounds as Lender may in its absolute and sole discretion deem proper. If Grantor fails to deposit with Lender sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Lender the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Lender may determine, notwithstanding that such Obligations may not yet be due.

(f) Grantor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure

whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

1.09 Utilities. Grantor shall pay when due all charges that are incurred by Grantor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.10 Actions Affecting Trust Estate. Grantor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Lender or Trustee may appear.

1.11 Actions By Lender. If Grantor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Lender, in its absolute and sole discretion, without obligation so to do, without releasing Grantor from any obligation, and with only such notice to or demand upon Grantor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Lender has and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance (as defined in Section 1.16) whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Grantor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all respective costs and expenses incurred by them in connection with the exercise by Lender of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer of Trust Estate by Grantor. In order to induce Lender to make the Loan, Grantor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Lender, Lender shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Lender may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Grantor or any maker or guarantor of the Note from any liability thereunder without the prior written consent of Lender. As used herein, "Transfer" shall mean:

(i) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that any lease approved or deemed approved by Lender under the terms of the Credit Agreement is not a Transfer;

(ii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any membership interest in Grantor or any member of Grantor to or in any Person whether voluntary, involuntary, by operation of law, or otherwise that results in a change in control; for purposes of this Section, "change in control" shall mean any transaction that results in Person or Persons owning, less than fifty-one percent (51%) of the membership interests in Grantor or (ii) any Person other than Guarantors or the manager of Grantor, directly or indirectly, though one or more subsidiaries, having the responsibility for managing the business and affairs of Grantor;

(iii) any consolidation or merger of Grantor or any member of Grantor into or with any Person, whether voluntary, involuntary, by operation of law, or otherwise; or

(iv) the execution of any agreements to do any of the foregoing.

1.13 Eminent Domain.

(a) In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "**Taking**"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Grantor receive any notice or other information regarding such Taking or damage, Grantor shall give prompt written notice thereof to Lender. All compensation, awards, damages, rights of action and proceeds awarded to Grantor by reason of any such Taking or damage or received by Grantor as the result of a transfer in lieu of a Taking (the "**Condemnation Proceeds**") are hereby assigned to Lender, and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Lender or Trustee may require. If Grantor receives any Condemnation Proceeds Grantor shall promptly pay over such proceeds to Lender. Lender is hereby authorized and empowered by Grantor, at Lender's option and in Lender's sole discretion, as attorney-in-fact for Grantor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Grantor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(b) Grantor shall not be excused from repairing or maintaining the Trust Estate as provided in Section 1.02 or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Grantor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default

or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Lender at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Inspections. Lender, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Lender is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.16 Ownership and Liens and Encumbrances. Grantor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Grantor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Grantor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Grantor shall notify Lender immediately in writing of any Lien or Encumbrance or claim thereof. Grantor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Grantor shall first deposit with Lender a bond or other security satisfactory to Lender in such amount as Lender shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Grantor loses such contest, Grantor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Grantor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Lender, Lender may, after only such notice to Grantor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Grantor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "Lien or Encumbrance" and "Liens and Encumbrances" mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or

involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Lender in this Deed of Trust.

1.17 Lender's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Lender may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release, or cause to be released, at any time at Lender's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.18 Financial Statements. Grantor shall deliver to Lender such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Credit Agreement. All such statements shall be prepared in accordance with the requirements of the Credit Agreement. Lender shall have the right to audit, inspect and copy all of Grantor's books and records, relating thereto.

1.19 Trade Names. At the request of Lender from time to time, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names or fictitious business names under which Grantor intends to operate the Trust Estate or any business located thereon and representing and warranting that Grantor does business under no other trade names or fictitious business names with respect to the Trust Estate. Grantor shall immediately notify Lender in writing of any change in said trade names or fictitious business names, and will, upon request of Lender, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names.

1.20 Leasehold. If a leasehold estate constitutes a portion of the Trust Estate, Grantor agrees not to terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion. In addition, Grantor agrees not to amend, modify, extend, or renew such leasehold estate with terms that in any way to shorten the term of the lease, reduce the monthly or other payments due and payable thereunder, or in any other way which could reasonably be expected to materially adversely effect the Lender's rights hereunder or under the other Loan Documents, without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion. Consent of Lender to one such amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Grantor agrees to perform all obligations and agreements under said leasehold and shall not take any action or omit to take any action which would effect or permit the termination of said leasehold. Grantor agrees to promptly notify Lender in writing with respect to any default or alleged default by any party thereto and to deliver to Lender copies of all notices, demands, complaints or other communications received or given by Grantor with respect to any such default or alleged default. Lender shall have the option to cure any such default and to perform any or all of Grantor's obligations thereunder. All sums expended by Lender in curing any such

default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

1.21 Application of Insurance Proceeds and Condemnation Proceeds. Notwithstanding the other provisions of this Deed of Trust to the contrary, Lender agrees that Grantor shall have the right to apply insurance proceeds and Condemnation Proceeds to the repair, replacement, or restoration of the Trust Estate if each of the following conditions precedent is satisfied:

(a) Grantor delivers notice to Lender of its intention to repair, replace, or restore the Trust Estate within thirty (30) days after settlement of any claim under any insurance policies or any claim as to any Taking, the proceeds of which are used to pay for the repair, replacement, or restoration of the Trust Estate.

(b) Lender determines in its sole discretion (i) that the Trust Estate can be repaired, replaced, or restored to substantially the same condition prior to the Taking or casualty, and (ii) that the repair, replacement, or restoration of the Trust Estate can be completed no later than one (1) year prior to the earliest maturity date of any Note (as extended from time to time).

(c) No Event of Default, or event which with notice or lapse of time would become an Event of Default, has occurred and is continuing.

(d) All Condemnation Proceeds and insurance proceeds, as applicable, are deposited with Lender.

(e) Grantor has deposited with Lender an amount, if a positive amount (as determined by Lender) equal to (A) the sum of (1) the cost of the repair, replacement, or restoration of the Trust Estate, and (2) all operating expenses of the Trust Estate until such time as the Trust Estate can generate sufficient income to pay such operating expenses; less (B) the sum of (1) the Condemnation Proceeds or insurance proceeds deposited with Lender, and (2) if the obligations secured hereby include a loan by Lender to Grantor to finance the construction of any improvements to be repaired, replaced, or restored, any undisbursed portion of such loan available under the Credit Agreement for construction of such Improvements.

(f) Grantor has delivered to Lender (A) final plans and specifications for the repair, replacement, or restoration of the Trust Estate, (B) a budget of all costs, expenses, and fees for the repair, replacement, or restoration of the Trust Estate, (C) a construction schedule for the repair, replacement, or restoration of the Trust Estate, and (D) a construction contract for the repair, replacement, or restoration of the Trust Estate, and Lender has approved such plans and specifications, budget, construction schedule, and construction contract and the contractor under the construction contract in its sole discretion.

(g) All applicable Governmental Authorities have approved the final plans and specifications for the repair, replacement, or restoration of the Trust Estate. Grantor has obtained all other approvals and permits required for such repair, replacement, or restoration.

(h) If required by Lender, Grantor has delivered to Lender, written confirmation agreements or other written evidence reasonably satisfactory to Lender relating to leases of the Trust Estate in order to comply with the Debt Yield Coverage set forth in the Credit Agreement, in form and substance reasonably satisfactory to Lender, indicating that the tenants under such leases will remain in possession and continue to perform their obligations under such leases and will not terminate such leases by reason of such damage, destruction, or Taking.

(i) The approved contractor commences the repair, replacement, or restoration of the Trust Estate.

If all of the above conditions are satisfied, Lender will disburse the Condemnation Proceeds, insurance proceeds, and any other amount deposited with Lender pursuant to the foregoing and in accordance with Lender's customary procedures for disbursement of construction loans; provided that if requested by Lender, Grantor shall execute such documents regarding such disbursements and requirements as Lender may request. If any of the above conditions are not satisfied within the time limits described above or, if after satisfaction of the above conditions, Grantor does not prosecute and complete the repair, replacement, or restoration of the Trust Estate with due diligence and in accordance with the construction schedule and within the budget approved by Lender, Lender may at any time apply the then remaining Condemnation Proceeds, insurance proceeds, and any other amount deposited with Lender to the payment of the obligations secured hereby, whether or not then due, and Lender shall have no obligation to disburse such proceeds or deposited funds for the payment of the costs, expenses, and fees incurred in the repair, replacement, or restoration of the Trust Estate. If there are any Condemnation Proceeds, insurance proceeds, or other amounts deposited with Lender pursuant hereto remaining after payment of such obligations in full, such funds shall be paid to the person legally entitled thereto. To the extent that the Credit Agreement provides for advances for the construction of improvements on the Trust Estate, Grantor shall not have any further obligation to make advances with respect to such improvements unless and until the repair, replacement and restoration of the Improvements and application of Condemnation Proceeds and Insurance Proceeds is complete.

1.22 Impounds.

(a) From and after the occurrence and continuation of an Event of Default, as further security for the payment of the Note and the payment of real estate taxes, regular or special assessments and insurance premiums, Grantor shall be required to deposit, with each payment on the Note, an amount which shall, when multiplied by the number of loan payments due under the Note each year, be sufficient, in the reasonable estimation of Lender (as determined each year) to pay all such charges not less than thirty (30) days prior to the date on which such items become due and payable. Lender shall be furnished evidence to allow it to estimate such amounts, including paid receipts, assessment notices and tax receipts. All funds so deposited (i) shall be held free of any liens or claims on the part of creditors of the Grantor; and (ii) shall not be, or deemed to be, a trust fund; and such funds shall, until applied to the payment of the aforesaid items, as hereinafter provided, be held by Lender without interest (except to the extent required under applicable law) and may be commingled with other funds of Lender. All funds so

deposited shall be applied to the payment of the aforesaid items only upon the satisfaction of the following conditions: (1) no Event of Default or event, which, with notice or the passage of time or both, could become an Event of Default, shall have occurred and be continuing; (2) Lender shall have sufficient funds to pay the full amounts of such items (which funds may include amounts paid solely for such purpose by Grantor in addition to the escrowed funds); and (3) Grantor shall have furnished Lender with prior written notification that such items are due and with the bills and invoices therefor in sufficient time to pay the same before any penalty or interest attaches, and shall have deposited any additional funds as Lender may reasonably determine as necessary to pay such items.

(b) If for any reason the funds on deposit with Lender under this Section 1.22 shall not be sufficient to pay all charges specified herein within the time specified in this Section 1.22, then Grantor shall, within ten (10) days after demand by Lender, deposit sufficient sums so that Lender may pay all such charges in full, together with any penalty and interest thereon (except for any penalty or interest which results from Lender's negligent failure to timely pay such charges). If the funds on deposit with Lender shall from time to time exceed the amounts needed to pay all charges specified herein, then such excess shall be held by Lender for further payments of such charges as specified in this Section 1.22.

(c) Lender expressly disclaims any obligation to pay the aforesaid items unless and until Grantor complies with all of the provisions set forth in subsections 1.22(a) and (b). Payments of all charges specified herein will, at the discretion of Lender, be made as the same become due and payable even though subsequent owners of the Trust Estate may benefit therefrom. Lender may, in refunding any part of the funds deposited hereunder as a result of the Note being paid in full, or for any other reason at the discretion of Lender, pay the amount being refunded to whoever is represented to be the owner of the Trust Estate or any portion thereof at the time such refund is made. Grantor hereby pledges any and all monies now or hereafter deposited pursuant to subsection 1.22(b) as additional security for the Note and Related Agreements. If any Event of Default shall have occurred, or if the Note shall be accelerated as herein provided, all funds so deposited may, at Lender's option, be applied as determined solely by Lender or to cure said Event of Default or as provided in this Section 1.22. In no event shall Grantor claim any credit against the principal and interest due hereunder for any payment or deposit for any of the aforesaid items.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment of Rents and Leases. Effective upon the recordation of this Deed of Trust, Grantor hereby irrevocably, absolutely, presently and unconditionally assigns, transfers, and sets over to Lender, all rents, security deposits, royalties, issues, profits, earnings, revenue, income, products and proceeds of the Trust Estate, whether now due, past due or to become due, including, without limitation, all prepaid rents, security deposits, and all rights to payment from the above-listed items (some or all collectively, as the context may require, "**Rents**"), and all rights in and to any lease or agreement written or oral, devising any portion of the Trust Estate whether in existence at or upon the recordation of this Deed of Trust or entered into after the

recordation of this Deed of Trust (each, a "Lease"), and confers upon the Lender the right to collect such Rents and enforce the provisions of any Leases with or without taking the Trust Estate. This is an absolute assignment, not an assignment for security only; however, if this present, absolute and unconditional assignment of Rents and Leases is not enforceable by its terms under the laws of the State of Washington, then, notwithstanding anything in this Deed of Trust to the contrary, such assignment is intended for security and shall create and perfect a lien on Rents and Leases in favor of Beneficiary. It is the parties' intention that such assignment shall be specific, perfected and choate upon recording as provided in RCW 7.28.230(3).

2.02 Grant of License. Lender hereby confers upon Grantor a license ("License") to collect and retain the Rents as they become due and payable and to otherwise possess and enjoy all of the landlord's rights and obligations under all of the Leases, so long as no Event of Default, as defined in Section 4.01, shall exist and be continuing. If an Event of Default has occurred and is continuing, Lender shall have the right, which it may choose to exercise in its sole discretion, to terminate this License with notice to Grantor, and without regard to the adequacy of Lender's security under this Deed of Trust.

2.03 Collection and Application of Rents and Enforcement of Leases. Subject to the License granted to Grantor under Section 2.02, Lender has the right, power and authority to collect any and all Rents and enforce the provisions of any Lease. Grantor hereby irrevocably appoints Lender its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when Lender in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Grantor or in the name of Lender for any and all Rents; or
- (d) Enforce the provisions of any and all Leases.

The appointment granted in this Section 2.03 shall be deemed to be a power coupled with an interest. Lender's right to the Rents, or to enforce the provisions of any Lease, does not depend on whether or not Lender takes possession of the Trust Estate as permitted under Article IV below. In Lender's sole discretion, Lender may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Trust Estate. Lender shall apply all Rents collected by it in the manner provided under Section 2.06. If an Event of Default occurs and continues while Lender is in possession of all or part of the Trust Estate and is collecting and applying Rents as permitted under this Deed of Trust, Lender and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted under in this Deed of Trust.

2.04 Lender Not Responsible. Under no circumstances shall Lender have any duty to produce Rents from the Trust Estate. Regardless of whether or not Lender, in person or by

agent, takes actual possession of the Premises and Improvements, Lender is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the Grantor as lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Trust Estate, or any negligence in the management, upkeep, repair or control of the Trust Estate; or
- (d) Liable in any manner for the Trust Estate or the use, occupancy, enjoyment or operation of all or any part of it.

2.05 Leasing. Grantor shall deliver copies or originals of any or all Leases to Lender as and when requested from time to time by Lender.

2.06 Application of Rents. Upon such entry, Lender shall, after payment of all property charges and expenses (including, without limitation, compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Lender. Lender shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Lender shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Lender's judgment shall be deemed conclusive and reasonable.

2.07 Indemnity. Grantor hereby agrees to indemnify and hold harmless Lender for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

2.08 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Lender to perform any obligations of Grantor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Lender, this assignment shall not operate to place upon Lender any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care, management

and repair of the Trust Estate is and shall be that of Grantor, prior to such actual entry and taking of possession.

ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Grantor hereby grants to Lender a security interest in and to all the Personal Property.

3.02 Representations, Warranties and Covenants of Grantor. Grantor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Grantor to Lender and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought for personal, family or household purposes.

(b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Grantor will not, without the prior written consent of Lender, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with similar items of greater value.

(c) At the request of Lender, Grantor will join Lender in executing one or more financing statements and fixture filings pursuant to the Uniform Commercial Code, in form satisfactory to Lender and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Lender to be necessary or desirable.

(d) Grantor's principal place of business is at the address given above in the preamble of this Deed of Trust. Grantor does not do business under any trade name except as previously disclosed in writing to Lender. Grantor will immediately notify Lender in writing of any change in its place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Lender, execute any additional financing statements or other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Grantor will also promptly notify Lender (i) of any change of Grantor's organizational identification number or (ii) if Grantor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(e) Grantor shall immediately notify Lender of any claim against the Personal Property adverse to the interest of Lender therein.

3.03 Use of Personal Property by Grantor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Grantor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.04 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 4.02 hereof, upon the occurrence of an Event of Default hereunder, Lender may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantor with respect to the Personal Property or any part thereof. In the event Lender demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Grantor agrees to promptly turn over and deliver possession thereof to Lender;

(ii) Without notice to or demand upon Grantor, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Grantor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and deliver promptly such Personal Property to Lender, or an agent or representative designated by Lender. Lender, and its agents and representatives, shall have the right to enter upon any or all of Grantor's premises and property to exercise Lender's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Lender by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Lender may determine;

(v) Sell or cause to be sold in such order as Lender may determine, as a whole or in such parcels as Lender may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Lender may determine. Lender may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Grantor at least five (5) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Grantor at the address set forth in Section 5.05. If Lender fails to comply with this Section 3.04(b) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on its as a matter of law under the Uniform Commercial Code.

(c) The proceeds of any sale under Section 3.04(a)(vi) shall be applied as required by applicable Washington law to the extent required thereby; otherwise, as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Lender shall determine; and

(iii) The surplus, if any, shall be paid to the Grantor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) Lender may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(e) Lender may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property.

(f) Grantor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Grantor acknowledges that the Personal Property may be sold at a loss to Grantor and that, in such event, Lender shall have no liability or responsibility to Grantor for such loss.

Lender shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Lender from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal

Property pursuant to the terms hereof shall not operate to release Grantor until full payment of any deficiency has been made in cash.

3.05 Security Agreement. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code and Lender shall be entitled to all the rights and remedies of a "secured party" under the Uniform Commercial Code.

3.06 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. This Deed of Trust shall also be effective as a financing statement covering as extracted collateral (including oil and gas), accounts and general intangibles under the Uniform Commercial Code and the Uniform Commercial Code as in effect from time to time in any other state where the Trust Estate is situated. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

3.07 Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Grantor as authorized by applicable law, as applicable to the Trust Estate. For purposes of such filing, Grantor agrees to furnish any information requested by Lender promptly upon request by Lender. Grantor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section 3.07, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 Event of Default. An Event of Default (as defined in the Credit Agreement) under the Credit Agreement, the Note or any other Loan Document and any breach, default or failure to comply with any provision of this Deed of Trust constitutes an "Event of Default" under this Deed of Trust.

4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Lender may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Lender, in addition to the exercise of any or all of the remedies specified elsewhere in this Deed of Trust, may exercise any or all of the remedies specified in this Article IV.

4.03 Entry. Lender, in person, by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, ex parte or otherwise, and without regard to the adequacy of its security or the solvency of Grantor, may enter, take possession of, manage and operate all or any part of the Trust Estate, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Grantor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Lender may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of Rents and other money owing to Grantor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Lender so requests, Grantor shall assemble all of the Trust Estate that has been removed from the Premises and make all of it available to Lender at the site of the Premises. Grantor hereby irrevocably constitutes and appoints Lender as Grantor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Lender in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments. The appointment granted in this Section 4.03 shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust or any other Loan Document, Lender shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Grantor to Lender, unless Lender has given express written notice of Lender's election of that remedy in accordance with Section 9-620 of the Uniform Commercial Code. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale.

4.03 Judicial Foreclosure. Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

4.04 Intentionally Omitted.

4.05 Appointment of Receiver. Lender, as a matter of right and without notice to Grantor or any one claiming under Grantor, and without regard to the then value of the Trust Estate or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction, either ex parte or otherwise, and without regard to the adequacy of its security or the solvency of the Grantor, to appoint a receiver or receivers of the Trust Estate, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period unless such receivership is sooner terminated.

4.06 Other Remedies. Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law or at equity.

4.07 Remedies Not Exclusive. Lender is entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security or guaranty now or hereafter held by Lender, it being agreed that Lender is entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law or at equity. Every power or remedy given by any of the Loan Documents or by law to Lender or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and, to the extent permitted by law, either of them may pursue inconsistent remedies.

4.08 Application of Proceeds. The proceeds of the sale of the Trust Estate or any portion thereof shall be applied as required by applicable Washington law to the extent required thereby; otherwise, in the following manner:

(a) First, to pay all costs and expenses of foreclosing this Deed of Trust and/or the sale or disposition of the Trust Estate or any portion thereof, including, but not limited to, trustee's fees, court costs, costs of evidence of title in connection with sale and reasonable attorneys' fees actually incurred; and

(b) Second, to pay the Obligations, to the extent permitted by applicable law, in any order and proportions as Lender in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons legally entitled thereto.

To the extent allowed under applicable law, if the Obligations include more than one loan or line of credit, by cross collateralization or otherwise, it is specifically agreed that the proceeds of any sale of the Trust Estate or any portion thereof or any other foreclosure action shall not be applied pro-rata unless such application is directed by Lender, but instead shall be applied to all such Obligations in any order, proportions and manner as Lender in its sole and absolute discretion may choose.

ARTICLE V
MISCELLANEOUS

5.01 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Lender to exercise and no delay by Lender in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

5.02 Grantor Waiver of Rights. Grantor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Grantor may have or be able to assert by reason of the laws of the State of Washington pertaining to the rights and remedies of sureties.

5.03 Statements by Grantor. Grantor shall, within ten (10) days after written notice thereof from Lender, deliver to Lender a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

5.04 Release by Trustee. Upon written request of Lender stating that all Obligations have been satisfied in full, and upon payment by Grantor of Trustee's fees, Trustee will release, the lien of this Deed of Trust from all or any portion of the Trust Estate then encumbered hereby.

5.05 Notices. Any notice required or desired to be given by the parties hereto shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including, by example and not limitation, United Parcel Service or Federal Express. Any such notice shall be deemed given when personally delivered; if mailed, three (3) delivery days after deposit in the United States mail, postage prepaid; if sent by telephone facsimile, on the day sent if sent on a business day during normal business hours of the recipient or on the next business day if sent at any other time; or if sent by overnight delivery service, one (1) business day after deposit in the custody of the delivery service. The addresses and telephone numbers for the mailing, transmitting, or delivering of notices shall be as follows:

To Lender: First Western Trust Bank
1155 Canyon Blvd, Suite 300
Boulder, CO 80302.
Attention: Liles Lipe, Vice President
Telephone: (303) 441-9405
Facsimile: (303) 441-9456

and: First Western Trust Bank
1900 16th Street, Suite 1200
Denver, Colorado 80202

Attention: Jonathan Braun, Esq.
Telephone: (303) 531-8100
Facsimile: (303) 634-2775

To Grantor:

Atlas Tower Holdings, LLC
4450 Arapahoe Ave., Suite 100
Boulder, CO 80303
Attention: Nathan L. Foster, Manager
Telephone: (303) 448-8896
Facsimile: (303) _____

5.06 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

5.07 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

5.08 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Lender at Grantor's request and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.09 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Grantor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

5.10 Governing Law. THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

5.11 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Grantor, all obligations of Grantor herein shall be the joint and several obligations of each party executing this Deed of Trust as Grantor.

5.12 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

5.13 Loan Statement Fees. Grantor shall pay the amount demanded by Lender or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

5.14 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

5.15 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration executed by Lender so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

5.16 Status of Title. Grantor represents and warrants to Lender that:

(a) it is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds leasehold title to the Premises and title to the Improvements subject to the terms of the Primary Lease and that Grantor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust;

(b) Grantor's exact legal name is correctly set forth in the introductory paragraph of this Deed of Trust;

(c) if Grantor is not an individual, Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust;

(d) if Grantor is an unregistered entity (including, without limitation, a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust; and

(e) Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust.

5.17 Integration. The Loan Documents contain the complete understanding and agreement of Grantor and Lender and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

5.18 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Grantor, Trustee and Lender and their respective successors and assigns. Grantor may not delegate its obligations under the Loan Documents.

5.19 Time of the Essence. Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

5.20 Survival. The representations, warranties, and covenants of the Grantor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

5.21 Costs and Expenses. All costs and expenses reasonably incurred by Lender in connection with entering into possession of the Trust Estate, either by a court-appointed receiver or by any other legally permissible means, assuming control with respect to the development, construction, operation, maintenance, repair and/or restoration of the Trust Estate and/or any Improvements thereon, enforcing all Leases and/or collecting all Rents due thereunder, and taking any and all other acts permitted under the Loan Documents which Lender shall reasonably determine to be necessary for the administration of the Loan, to enforce the provisions and/or to carry out the purposes of the Note, the Credit Agreement, this Deed of Trust and/or other Loan Documents (including without limitation any reasonable attorney's fees, appraisal and/or appraisal review charges, environmental consulting, inspection and/or review costs, property inspection fees, consultant expenses and other similar costs) shall be reimbursed by Grantor on demand and, if not then paid, all such sums shall be added to the amount owing under the Note and shall be secured by the lien of the Deed of Trust, and shall bear interest at the rate provided for in the Note, including any applicable default rate. For purposes hereof, Lender shall include Lender, and any beneficiary or holder of the Note.

ARTICLE VI LOCAL LAW PROVISIONS

6.01 Acceleration; Remedies. Lender shall give notice to Grantor prior to acceleration following Grantor's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration unless applicable law of the State of Washington ("Applicable Law") provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Grantor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Grantor of the right to reinstate after acceleration, the right to bring a court action to assert the

non-existence of a default or any other defense of Grantor to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 6.01, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Grantor and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

6.02 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

6.03. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

6.04 Maturity Date. The maturity date of the Obligations secured by this Deed of Trust is November 26, 2026.

6.05 Maximum Principal Amount. It is expressly understood that the Obligations secured by this Deed of Trust will in no event exceed Six Million and No/100 Dollars (\$6,000,000.00).

6.06 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article VI and the other terms and conditions of this Deed of Trust, the terms and conditions of this Article VI shall control and be binding.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first above written.

GRANTOR:

ATLAS TOWER HOLDINGS, LLC,
a Colorado limited liability company

By: Atlas Tower Holdings Management, LLC

Its: Manager

By: 

Name: Nathan L. Foster

Title: Manager

STATE OF COLORADO)

) ss:

COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this __ day of July 2015, by Nathan L. Foster, as Manager of Atlas Tower Holdings Management, LLC, as Manager of Atlas Tower Holdings, LLC, a Colorado limited liability company.

My commission expires:

7/23/2019

[SEAL]


NOTARY PUBLIC

JAMIE LYNN ROSA
NOTARY PUBLIC - STATE OF COLORADO
My Identification # 20154028955
Expires July 23, 2019

EXHIBIT A
LEGAL DESCRIPTION

A leasehold estate in:

PARCEL "A":

That portion of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 34 North, Range 4 East, W.M., lying Westerly of the centerline of Britts Slough, EXCEPT the North 200 feet of that portion thereof lying South of the County road running along the North line of said subdivision, AND ALSO EXCEPT that portion lying South of a line beginning 29 rods $7\frac{1}{2}$ feet North of the Southwest corner of said Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and running thence East to the center of Britts Slough.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

The East 60 feet of the West 360 feet of the North 200 feet of that portion of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 34 North, Range 4 East, W.M., lying South of the County road running along the North line of said subdivision.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

That portion of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 34 North, Range 4 East, W.M., described as follows:

Beginning 29 rods $7\frac{1}{2}$ feet North of the Southwest corner of said Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$; thence East to the centerline of Britts Slough, the true point of beginning of the herein described tract; thence continue East to the West line of the County Road; thence Northerly along the Westerly line of the County Road to a point 60 feet North of the line first described herein; thence West parallel to and 60 feet North of the said first described line to the center of Britts Slough; thence Southerly along the centerline of Britts Slough to the true point of beginning,

EXCEPT any portion thereof owned by or used for Dike or Ditch rights of way by Diking District No.3, AND ALSO EXCEPT any portion thereof lying within the boundaries of the following described tract:

Beginning at a point in the centerline of Britts Slough on the line between the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, said Section; thence due East 18 rods; thence South to the center of Britts Slough; thence Northerly along the centerline of Britts Slough to the point of beginning;

Situate in the County of Skagit, State of Washington.

EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY

All of Grantor's assets, including without limitation, "Account", "Cash proceeds", "Chattel paper", "Collateral", "Deposit account", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Deed of Trust", "Inventory", "Investment property", "Letter-of-credit right", "Noncash proceeds", "Proceeds", and "Tangible chattel paper", as defined in the Uniform Commercial Code. Such assets include without limitation,

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Grantor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Grantor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property ("**Personal Property**");

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such Personal Property or any part thereof or from the Premises, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Grantor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Grantor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Grantor's partners or shareholders, amounts payable on account of the sale of partnership interests in Grantor or the capital stock of Grantor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the Personal Property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) Grantor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

(g) All water stock relating to the Premises;

(h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate;

(i) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of the Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;

(j) All commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this Exhibit B or elsewhere in the Deed of Trust;

(l) All letter of credit rights (whether or not the letter or credit is evidenced by a writing) Grantor now has or hereafter requires relating to the properties, rights, titles and interest referred to in this Deed of Trust;

(m) All proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith; and

(n) All Grantor's rights in proceeds of the loan evidenced by the Note.

As used in this Exhibit B the terms "Obligations", "Note", "Trust Estate", "Premises", "Improvements" and all other capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

EXHIBIT C

LEASEHOLD ADDENDUM TO DEED OF TRUST

This Leasehold Addendum to Deed of Trust ("**Addendum**") is attached to and made a part of that certain Deed of Trust and Fixture Filing (With Assignment of Leases and Rents and Security Agreement) (the "**Deed of Trust**") executed by ATLAS TOWER HOLDINGS, LLC, a Colorado limited liability company ("**Grantor**"), for the benefit of FIRST WESTERN TRUST BANK, a Colorado banking corporation ("**Lender**"). This Addendum shall constitute a part of the Deed of Trust and shall supplement the terms and conditions of the Deed of Trust. In the event of a conflict between the terms of the Deed of Trust and this Addendum, the terms of this Addendum shall prevail. Unless otherwise defined herein, the capitalized terms used herein shall have the meanings ascribed to them in the Deed of Trust. The term "**Deed of Trust**," as such term appears in any of the Loan Documents, shall mean and refer to the Deed of Trust, as supplemented by this Addendum, together with all exhibits.

1. Granting Clause. The granting language set forth in the second paragraph of the Deed of Trust shall extend to and include, and Grantor does hereby grant, bargain, sell, warrant and convey to Trustee, in trust with power of sale, for the use and benefit of Lender, the entire right, title and interest of Grantor in and to the Leasehold Estate (hereinafter defined) demised to Grantor pursuant to the terms and conditions of the Primary Lease (hereinafter defined), together with any other or greater interest in the Property hereafter acquired by Grantor, including, but not limited to, any estate hereafter acquired by Grantor in the land or improvements demised to Grantor under the provisions of such Primary Lease, and the entire right, title and interest of Grantor in, to and under the Primary Lease. Except for that portion of the Property in which Grantor's interest therein is in the nature of a leasehold estate, the Deed of Trust shall be deemed to encumber, and to grant, bargain, sell, warrant and convey to Trustee, in trust with power of sale, for the use and benefit of Lender, Grantor's right, title and interest to the Trust Estate. As used herein, the term "**Primary Lease**" shall mean that certain Lease Agreement between Trim Holdings, LLC and Grantor, dated December 31, 2013, as amended.

2. Representations and Warranties. Grantor hereby represents, covenants and warrants to Lender that:

a. Grantor is the sole owner and holder of the entire leasehold estate demised pursuant to the Primary Lease (referred to herein as the "**Leasehold Estate**") and the entire right, title and interest of the lessee or tenant under the Primary Lease creating such Leasehold Estate, and such Leasehold Estate and Grantor's interest under such Primary Lease are free and clear of all liens, encumbrances, security interests and other claims whatsoever.

b. the Primary Lease is in full force and effect and unmodified;

c. all rents (including any additional rents and other charges) reserved in the Primary Lease have been paid to the extent they were payable prior to the date hereof;

d. there are no defaults under the Primary Lease by any of the parties thereto and there are no events or circumstances existing which, after notice or the passage of time, or both, would constitute a default or an event of default under such Primary Lease; and

e. Grantor has obtained all such consents and approvals to mortgage, pledge, assign, transfer, grant, bargain, sell, warrant, convey and/or encumber Grantor's interest in and to the Leasehold Estate and/or the Primary Lease which are required from all landlords or lessors under the Primary Lease, and Lender is, and at all times will be, free to exercise its rights and powers pursuant to the Deed of Trust without any further consent or approval of any landlord or lessor under such Primary Lease.

3. Payments. Grantor will pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges mentioned in and made payable by the Primary Lease for which provision has not been made hereinbefore, when and as often as the same shall become due and payable, and Grantor will within ten (10) days following Lender's request therefor deliver to Lender evidence of such payments.

4. Performance of Primary Lease. Grantor shall timely pay and perform, in a timely manner, each of its obligations under or in connection with the Primary Lease, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain the Primary Lease in full force and effect in accordance with its terms. Grantor shall immediately furnish to Lender copies of any notices given to Grantor by the lessor under the Primary Lease, alleging the default by Grantor in the timely payment or performance of its obligations under such Primary Lease and any subsequent communication related thereto. Grantor shall also promptly furnish to Lender copies of any notices given to Grantor by the lessor under the Primary Lease, extending the term of the Primary Lease, requiring or demanding the expenditure of any sum by Grantor (or demanding the taking of any action by Grantor), or relating to any other material obligation of Grantor under such Primary Lease or any subsequent communication related thereto. Grantor agrees that Lender, in its sole discretion, may advance any sum or take any action which Lender believes is necessary or required to maintain the Primary Lease (and, if so provided under the terms of the Primary Lease, in full force and effect, and all such sums advanced by Lender, together with all costs and expenses incurred by Lender in connection with action taken by Lender pursuant to this Section, shall be due and payable by Grantor to Lender upon demand, shall bear interest until paid at the Agreed Rate, and shall be secured by the Deed of Trust.

5. No Modification or Cancellation. Grantor will neither do nor neglect to do anything which may cause or permit the termination of the Primary Lease. Grantor will not surrender the Leasehold Estate or its interest in and to the Primary Lease, nor terminate or cancel or suffer the termination or cancellation of the Primary Lease, and it will not without the express written consent of Lender modify, change, supplement, alter or amend the Primary Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants herein and in the Primary Lease, Grantor hereby assigns to Lender all of its rights, privileges and prerogatives under the Primary Lease to terminate, cancel, modify, change, supplement, alter or amend the Primary Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Primary Lease without the prior written consent thereto by Lender shall be void and of no force

and effect. Grantor does hereby expressly release, relinquish and surrender unto Lender all of Grantor's right, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Primary Lease and any attempt on the part of Grantor to exercise any such right without the written authority and consent thereto of Lender being first had and obtained shall constitute an Event of Default hereunder and the entire indebtedness secured hereby shall, at the option of Lender, become due and payable forthwith and without notice.

The foregoing notwithstanding, so long as there is no Event of Default hereunder, or in the performance by Grantor of any of the terms, covenants and conditions in the Primary Lease, Lender shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Primary Lease.

6. Intentionally Omitted.

7. Subleases. All subleases entered into by Grantor with respect to all or any portion of the Trust Estate (and all existing subleases modified or amended by Grantor) shall provide that if Lender forecloses under this or any other Deed of Trust encumbering the Trust Estate or enters into a new lease with the landlord under the Primary Lease, whether pursuant to the provisions for a new lease contained in such Primary Lease, in any landlord estoppel agreement executed for the benefit of Lender, or otherwise, the subtenant shall attorn to Lender or its assignee and the sublease shall remain in full force and effect in accordance with its terms notwithstanding the termination of such Primary Lease.

8. Prepaid Rents; Security Deposits. Grantor hereby assigns to Lender a security interest in any and all prepaid rents and security deposits and all other security which the landlord under the Primary Lease now or hereafter holds for the performance of Grantor's obligations thereunder.

9. Estoppels. Promptly upon demand by Lender, Grantor shall use its best efforts to obtain from the landlord under Primary Lease, and furnish to Lender, an estoppel certificate of such landlords stating the date through which rent has been paid under the applicable lease, whether or not there are any defaults under the Primary Lease, the specific nature of any claimed defaults, and such other matters as may be reasonably requested by Lender.

10. No Waiver. Grantor will not waive, excuse, condone or in any way release or discharge the landlord under the Primary Lease of or from the obligations, covenants and agreements by said landlord to be done and performed.

11. Arbitration; Appraisal and Legal Proceedings. Grantor shall notify Lender of any arbitration, appraisal or legal proceedings involving obligations under the Primary Lease, and Lender may intervene in any such proceeding and be made a party. Grantor shall promptly provide Lender with a copy of any decision rendered in any such proceeding.

12. Default Under or Termination of Primary Lease; Performance by Lender. The occurrence of any default, after the expiration of any notice, grace and cure periods, by Grantor under the Primary Lease, or the termination of the Primary Lease before the expiration of the term thereof for any reason, without the prior written consent of Lender, shall constitute an

Event of Default under the Deed of Trust and under each of the other Loan Documents. For purposes of determining whether a default exists, Lender shall be entitled to rely on, and accept as correct, any notice of default delivered by the lessor under the Primary Lease. Lender may (but shall not be obligated to) take any action Lender deems necessary or desirable to prevent or cure any default by Grantor in the performance of or compliance with any of Grantor's covenants and obligations under the Primary Lease. In such event, the performance by Lender on behalf of Grantor shall not remove or waive, as between Grantor and Lender, the corresponding default under the terms hereof and any amount advanced and any costs incurred in connection therewith, with interest thereon at the Agreed Rate, shall be repayable by Grantor without demand and shall be secured hereby and any such failure aforesaid shall be subject to all of the rights and remedies of Lender under the Deed of Trust available on account of any Event of Default hereunder.

13. Advances by Lender. To the extent permitted by law, the price payable by Grantor or by any other party so entitled, in the exercise of the right of redemption, if any, from a sale of the Trust Estate under a judicial order or decree of foreclosure of the Deed of Trust shall include all rents paid and other sums advanced by Lender on behalf of Grantor as the tenant under the Primary Lease.

14. Merger. So long as any of the indebtedness secured by the Deed of Trust shall remain unpaid, unless Lender shall otherwise consent in writing, the fee title, if any, to any portion of the Trust Estate (including the Property) and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the landlord or in the tenant, or in a third party, by purchase or otherwise. Grantor further covenants and agrees that, in case Grantor shall acquire the fee title, or any other estate, title or interest in the Trust Estate (or any portion thereof), the Deed of Trust shall attach to and cover and be a lien upon such other estate so acquired, and such other estate so acquired by Grantor shall be considered as mortgaged, assigned or conveyed to Lender and the lien hereof shall cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed. The provisions of this Paragraph 14 shall not apply in the event the holder of the Note secured hereby acquires the fee title to the Trust Estate except if Lender shall so elect.

15. Rights of Lender. Lender shall have the right at any time during the term of the Primary Lease to:

a. do any act or thing required of Grantor under the Primary Lease that Grantor fails to do, and any act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Grantor's rights under the Primary Lease as if done by Grantor itself; and

b. realize on the security afforded by the Leasehold Estate and the Trust Estate by exercising foreclosure proceedings or power of sale or other remedy afforded at law or in equity, or under the Deed of Trust, and to:

(i) transfer, convey or assign the title of Grantor in the Primary Lease for the entire estate created by the Primary Lease to any purchaser at any foreclosure sale,

whether the foreclosure sale is conducted pursuant to court order or pursuant to the power of sale contained in the Deed of Trust; and

(ii) acquire and succeed to the interest of Grantor under the Primary Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to the power of sale contained in the Deed of Trust, or by assignment or deed in lieu of foreclosure.

16. Application of Insurance Proceeds and/or Condemnation Awards.

Notwithstanding anything contained in the Deed of Trust to the contrary, Lender shall have no obligation to apply insurance proceeds and/or condemnation awards to pay for repairs or replacements necessitated by a casualty and/or condemnation unless Grantor is the party under the Primary Lease responsible for such repair or replacement.

17. Bankruptcy Code.

a. Attachment to Right to Remain in Possession. The lien of the Deed of Trust shall attach to all of Grantor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of Grantor's rights to remain in possession of the property, estate and interest conveyed under the Deed of Trust.

b. Grantor's Election to Treat Primary Lease as Terminated. Grantor shall not without Lender's prior written consent elect to treat the Primary Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1). Any such election made without Lender's consent shall be void.

c. Assignment of Claim for Damages. Grantor hereby unconditionally assigns, transfers and sets over to Lender all of Grantor's claims and rights to the payment of damages arising from any rejection by the landlord under the Primary Lease (i.e., the fee owner) under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* Lender shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Primary Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the landlord under the Primary Lease under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the indebtedness and obligations secured by the Deed of Trust shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of the rejection of the Primary Lease as aforesaid shall be applied first to all costs and expenses of Lender (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph.

d. Disapproval of Rent Offset. If pursuant to Subsection 365(h)(1)(B) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1)(B), Grantor shall seek to offset against the rent reserved in the Primary Lease the amount of any damages caused by the nonperformance by the landlord under the Primary Lease of any of such landlord's obligations

under the Primary Lease after the rejection by such landlord of the Primary Lease under the Bankruptcy Code, Grantor shall, prior to effecting such offset, notify Lender of its intent so to do, setting forth the amounts proposed to be so offset and the basis therefor. Lender shall have the right to object to all or any part of such offset, and, in the event of such objection, Grantor shall not effect any offset of the amounts so objected to by Lender. If Lender shall have failed to object as aforesaid within ten (10) days after notice from Grantor in accordance with the first sentence of this paragraph, Grantor may proceed to effect such offset in the amounts set forth in Grantor's notice. Neither Lender's failure to object as aforesaid nor any objection or other communication between Lender and Grantor relating to such offset shall constitute an approval of any such offset by Lender. Grantor shall pay and protect Lender, and indemnify and save Lender harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, attorneys' fees) arising from or relating to any offset by Grantor against the rent reserved in the Primary Lease.

e. Control of Litigation. If any action, proceeding, motion or notice shall be commenced or filed in respect of the landlord under the Primary Lease or the estate, interest or property conveyed by Grantor hereunder in connection with any case under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, Lender shall have the option, to the exclusion of Grantor, exercisable upon notice from Lender to Grantor, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Lender in connection therewith. Grantor shall, upon demand, pay to Lender all costs and expenses (including attorneys' fees) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Grantor as aforesaid shall be secured by the lien of the Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Primary Lease in any such case under the Bankruptcy Code without the prior written consent of Lender.

f. Notice of Filing of Petition by or Against the Landlord Under the Primary Lease. Grantor shall, after obtaining knowledge thereof, promptly notify Lender orally of any filing by or against the landlord under the Primary Lease of a petition under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, by telephonic notice to the location for Lender stated herein for notice. Grantor shall thereafter forthwith give written notice of such filing to Lender setting forth any information available to Grantor as to the date of such filing, the court in which such petition was filed and the relief sought therein. Grantor shall promptly deliver to Lender, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

g. Lender's Assumption of the Primary Lease. If there shall be filed by or against Grantor a petition under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* and Grantor as lessee under the Primary Lease shall determine to reject the Primary Lease pursuant to Section 365(a) of the Bankruptcy Code, Grantor shall give Lender not less than ten (10) days prior notice of the date on which Grantor shall apply to the Bankruptcy Court for authority to

reject the Primary Lease. Lender shall have the right, but not the obligation, to serve upon Grantor within such ten (10) day period a notice stating that (i) Lender demands that Grantor assume and assign the Primary Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Primary Lease. If Lender shall serve upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject the Primary Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given subject to the performance by Lender of the covenant provided for in clause (ii) in the preceding sentence.

h. Extension of Rejection Period. Effective upon the entry of an order for relief in respect of Grantor under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, Grantor hereby assigns and transfers to Lender a nonexclusive right to apply to the Bankruptcy Court under Subsection 365(d) of the Bankruptcy Code for an order extending the period during which the Primary Lease may be rejected or assumed.

18. Bankruptcy Code Defined. As used in the Loan Documents (i) any reference to the "**Bankruptcy Code**" shall be a reference to Title 11 of the United States Code, as the same may be amended from time to time or any successor statute, and (ii) any reference to a specific section of Title 11 of the United States Code shall be a reference to such section, as the same may be amended from time to time or any successor statute.

19. Grant of Security Interest. As additional security for the Obligations, Grantor hereby grants to Lender a security interest in all of Grantor's rights and remedies at any time arising under or pursuant to Section 365(h) of Title 11 of the Bankruptcy Code, or under or pursuant to any other provision of the Bankruptcy Code, including, without limitation, all of Grantor's rights to remain in possession of any portion of the Trust Estate that is subject to a Primary Lease.