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MAC C7300-033
1700 Lincoln Street, 3rd floor
Denver, Colorado 80203
Attention: Loan Documentation
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**AMENDED AND RESTATED CONSTRUCTION LEASEHOLD DEED OF TRUST
WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Grantor (Grantor): JANICKI INDUSTRIES, INC.

Grantor (Grantor): PUNKIN CENTER WEST, LLC

Grantee (Beneficiary): WELLS FARGO BANK, NATIONAL ASSOCIATION

Grantee (Trustee): WELLS FARGO FINANCIAL NATIONAL BANK

Legal Description (abbreviated): PTN N/2 14-35-06.

Additional legal(s) on pages A-1-A-2.

Assessor's Tax Parcel/Account Number(s):

P41176/350614-0-007-0000, P41201/350614-2-001-0002, P41204/ 350614-2-004-0009, and
P41216/ 350614-2-017-0004

Reference No. of Deed of Trust: 200807010058

THIS AMENDED AND RESTATED CONSTRUCTION LEASEHOLD DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is entered into as of August 1, 2018, by and among PUNKIN CENTER WEST, LLC ("PCW"), JANICKI INDUSTRIES, INC. ("Janicki" and, individually and collectively with PCW, "Grantor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"). This Deed of Trust amends and restates in its entirety that certain Leasehold Deed of Trust, Security Agreement and Financing Statement dated as of June 30, 2008, executed by Janicki to Wells Fargo Financial National Bank, as Trustee ("Trustee"), in favor of Beneficiary, and recorded on July 1, 2008, under Recording No. 200807010058, of the Records of Skagit County, Washington, as modified (the "Prior Deed of Trust").

THE EXECUTION OF THIS DEED OF TRUST DOES NOT EXTINGUISH THE OBLIGATIONS OUTSTANDING IN CONNECTION WITH THE PRIOR DEED OF TRUST. NOTHING CONTAINED HEREIN SHALL TERMINATE ANY LIENS OR SECURITY INTERESTS PROVIDED IN THE DEED OF TRUST OR THE OBLIGATIONS DESCRIBED THEREIN, ALL OF WHICH SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS EXPRESSLY AMENDED HEREBY.

Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Credit Agreement (defined below). PCW is the tenant under that certain Commercial Lease Agreement, dated July 23, 2018, by and between Punkin Center, L.L.C. ("Punkin"), as landlord, and Grantor, as tenant (as may be further amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time, the "PCW Ground Lease"). Janicki is the tenant under that certain Commercial Lease Agreement, dated October 1, 2007, by and between Punkin, as landlord, and Janicki, as tenant (as may be further amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time, the "Janicki Ground Lease" and, individually and collectively with the PCW Ground Lease, the "Ground Lease").

ARTICLE I. GRANT IN TRUST

1.1 Grant. For the purposes and upon the terms and conditions in this Deed of Trust, Grantor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, Grantor's interest in: (a) all Grantor's interest in the leasehold interest in the real property located in Skagit County, Washington, and described on Exhibit A attached hereto, created by the Ground Lease; (b) all easements, rights-of-way and rights used in connection with or as a means of access to any portion of said real property; (c) all tenements, hereditaments and appurtenances thereof and thereto; (d) 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 said real property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with said real property; (e) all buildings, improvements, fixtures, equipment, and landscaping now or hereafter erected or located on said real property; (f) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, said real property; (g) all mineral rights, oil and gas rights, air rights, water or water rights, including without limitation, all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with said real property, whether decreed or undeclared, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in any water, canal, ditch or reservoir company, and all well permits, water service contracts, drainage rights and other evidences of any such rights; and (h) all interest or estate which Grantor now has or may hereafter acquire in said real property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of said real property by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said real property (collectively, the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

1.2 Address. The address of the Subject Property (if known) is: 34240 State Route 20, Hamilton, Washington 98255, 800 Cabin Creek Road, Hamilton, Washington 98255 and 34315 SR 20, Hamilton, Washington 98284. Neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A. In the event of any conflict between the provisions of Exhibit A and said address, Exhibit A shall control.

1.3 Ground Lease.

(a) Delivery of Ground Lease. Grantor has delivered to Beneficiary a true, correct and complete copy of the Ground Lease, together with all amendments, supplements, modifications, assignments or transfers thereto, if any, as described in the third paragraph of this Deed of Trust, and

Grantor represents that the Ground Lease has not been amended, supplemented, modified, assigned or transferred. PCW further represents that, other than the subleasehold estate held by Janicki, it holds the sole leasehold estate in the PCW Ground Lease, subject to no further subleases. Janicki further represents that it holds the sole leasehold estate in the Janicki Ground Lease, subject to no further subleases.

(b) Performance of the Ground Lease. Grantor shall not do any act which would destroy or materially impair the benefits to Beneficiary of this Deed of Trust, and without limiting the generality of the foregoing, Grantor agrees, subject to Grantor's rights of offset (if any) under the Ground Lease: (i) to perform promptly all obligations, agreements, covenants, terms and conditions imposed upon or assumed by it under the Ground Lease; (ii) not to take any action or omit to take any action which would effect or permit the termination of the Ground Lease; and (iii) to pay, when due, all basic rent and all other payments and charges under the Ground Lease, including, without limitation, insurance, taxes and assessments. Grantor agrees to perform all other obligation and agreements under the Ground Lease and Grantor agrees not to take any action or omit to take any action which would effect or permit the termination of said leasehold.

(c) No Surrender, Termination, Amendment or Sublease. Grantor shall not, without the prior written consent of Beneficiary: (i) surrender Grantor's leasehold estate and interest under the Ground Lease; (ii) terminate or cancel the Ground Lease; (iii) fail to renew or exercise any options to renew the Ground Lease; or (iv) sublease, assign or transfer all or any portion of Grantor's leasehold estate and interest under the Ground Lease. Grantor shall not, without the prior written consent of Beneficiary: (x) consent or refuse to consent to any action that Punkin, as ground lessor to Grantor, desires to take under or with respect to the Ground Lease; (y) modify, change, supplement, alter or amend the Ground Lease, either orally or in writing; or (z) waive or release Punkin from any obligations or conditions to be performed by Punkin under the Ground Lease. Consent to one modification, change, supplement, alteration, amendment or sublease shall not be deemed to be a waiver of the right to require consent to other, future or successive modifications, changes, supplements, alterations, amendments, subleases, assignments or transfers. Grantor shall promptly deliver to Beneficiary a true, correct and complete copy of any modification, change, supplement, alteration or amendment to the Ground Lease.

(d) No Subordination. Grantor shall not subordinate or consent to the subordination of its interest in the Ground Lease to any mortgage, security deed, deed of trust, lease or other interest in all or any part of the Subject Property without the written consent of Beneficiary.

(e) Notice of Default. Grantor shall give immediate notice to Beneficiary of the receipt by it of any notice of default or of the exercise of any remedies relating to defaults or breach of the Ground Lease, and shall deliver copies of any and all such notices to Beneficiary within three (3) Business Days after the receipt thereof. Grantor also shall furnish Beneficiary any and all information that Beneficiary may request concerning Grantor's performance under the Ground Lease.

(f) Beneficiary's Right to Cure. Beneficiary shall be entitled to take all actions necessary to cure any default by Grantor under the Ground Lease within the time provided by the terms of the Ground Lease for such purpose. Upon receipt by Beneficiary of any written notice of default by Grantor under the Ground Lease, Beneficiary may rely thereon and take any action to cure such default even though the existence of such default or the nature thereof is questioned or denied by Grantor or by any other party. Grantor hereby expressly grants to Beneficiary and agrees that Beneficiary shall have, the absolute and immediate right to enter in and upon the Subject Property or

any part thereof to such extent and as often as Beneficiary, in its reasonable discretion, deems necessary or desirable in order to prevent or to cure any such default with respect to the Ground Lease. Beneficiary may pay and expend such sums of money as Beneficiary in its reasonable discretion deems necessary for any such purpose, and Grantor hereby agrees to pay to Beneficiary within five (5) days after demand, all such sums so paid and expended by Beneficiary, together with interest thereon from the date of such payment at an annual rate equal to the prime rate plus four percent (4%). All sums so paid and expended by Beneficiary and the interest thereon shall be added to and be secured by the lien of this Deed of Trust.

(g) **Notice of Change in Title.** Grantor shall notify Beneficiary of any acquisition by Grantor of the fee title in any of the property covered by the Ground Lease. If Grantor obtains any further interest in the property covered by the Ground Lease, including such fee title such interest shall be covered by this Deed of Trust and Grantor shall execute and deliver to Beneficiary such additional documents as are reasonably necessary to protect Beneficiary's interest therein.

(h) **No Release.** No release or forbearance of any of Grantor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Grantor from any obligations under this Deed of Trust, including release from the obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of any of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed and complied with by Grantor as provided therein.

(i) **No Merger.** Unless Beneficiary shall consent in writing, so long as this Deed of Trust is in effect, the fee title to the property covered by the Ground Lease and Grantor's leasehold estate created by the Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary or Grantor by purchase, operation of law or otherwise. If Beneficiary shall acquire such fee title and leasehold estate by foreclosure of this Deed of Trust or otherwise, then such estates shall not merge as a result of such acquisition but shall remain separate and distinct for all purposes after such acquisition unless and until Beneficiary elects to merge such estates.

(j) **No Conflict.** The provisions hereof shall be deemed to be obligations of Grantor in addition to Grantor's obligations under the Ground Lease; provided, however, that nothing in this Deed of Trust shall be construed as requiring the taking of or the committing to take any action by Grantor or Beneficiary that would cause a default under the Ground Lease. The inclusion in this Deed of Trust of any covenants and agreements relating to similar matters under which Grantor is obligated under the Ground Lease shall not restrict or limit Grantor's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations under the Ground Lease.

(k) **Conditional Assignment of Ground Lease.** Grantor does hereby assign, transfer, set over and deliver to Beneficiary, for collateral purposes only, all of Grantor's rights, title and interest in, to and under the Ground Lease. By its acceptance hereof, Beneficiary hereby covenants and agrees that so long as there exists no Default hereunder, Grantor shall have the right to possess and enjoy the premises, subject to the terms and conditions contained herein.

(l) **Attorney-in-Fact.** Effective upon the occurrence and during the continuance of a Default, Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of Grantor, empowered and authorized in the name, place and stead of Grantor to exercise all rights of Grantor under the Ground Lease. The foregoing appointment is irrevocable and

continuing and such rights, powers and privileges shall be exclusive in Beneficiary, its successors and assigns, so long as any part of the Secured Obligations remains unpaid or undischarged.

(m) **New Ground Lease.** If, upon the occurrence and during the continuance of a Default, Beneficiary or its designee shall acquire or obtain a new ground lease covering any portion of the property covered by the Ground Lease (a "New Ground Lease"), then Grantor shall have no right, title or interest whatsoever in or to such New Ground Lease, or any proceeds or income arising from the estate arising under such New Ground Lease, including any from any sale or other disposition thereof. Beneficiary or its designee shall hold such New Ground Lease free and clear of any right or claim of Grantor.

(n) **Assignment of § 365(h) Election.** Grantor acknowledges that pursuant to Section 365 of the Bankruptcy Reform Act of 1978 (as the same may be amended or recodified from time to time, called the "Bankruptcy Reform Act") it is possible that a trustee in bankruptcy of Punkin, or Punkin as a debtor-in-possession, could reject the Ground Lease, in which case Grantor, as tenant, would have the election described in Section 365(h) of the Bankruptcy Reform Act (which election, as it may be amended, revised or recodified from time to time, and together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, is called the "Election") to treat the Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the tenant under applicable non-bankruptcy law.

(i) Grantor agrees not to terminate or permit termination of the Ground Lease by exercise of the Election without the prior written consent of Beneficiary. Grantor acknowledges that because the Ground Lease is a significant part of Beneficiary's security for the obligations secured under this Deed of Trust, Beneficiary does not anticipate that it would consent to termination of the Ground Lease and shall not under any circumstances be obliged to give such consent.

(ii) In order to secure the covenant made in subsection 1.3(n)(i) of this Deed of Trust and as security for the other obligations secured under this Deed of Trust, Grantor hereby assigns the Election to Trustee and Beneficiary under this Deed of Trust. Grantor acknowledges and agrees that this assignment of the Election is one of the rights which Trustee and Beneficiary may use at any time in order to protect and preserve the other rights and interests of Trustee and Beneficiary under this Deed of Trust, since exercise of the Election in favor of terminating the Ground Lease would constitute waste hereunder.

(iii) Grantor acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Grantor can separate from the Ground Lease. Therefore, Grantor agrees that exercise of the Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute a taking or sale of the subject property by Trustee or Beneficiary and shall not entitle Grantor to any credit against the obligations secured by this Deed of Trust.

(iv) Grantor further acknowledges and agrees that if the Election is exercised in favor of Grantor remaining in possession, then Grantor's resulting right under the Ground Lease to possession and use of (and rents and profits from) the real property described in Exhibit A, as adjusted by the effect of Section 365 of the Bankruptcy Reform Act, shall be part of the subject

property and shall be subject to the lien created by this Deed of Trust. However, Grantor acknowledges and agrees that the right under the Ground Lease to possession and use of the real property described in Exhibit A, as so adjusted, is not equivalent to the leasehold interest which is the subject property at the time of execution of this Deed of Trust. Therefore, Grantor agrees that rejection of the Ground Lease under the Bankruptcy Reform Act by a trustee in bankruptcy of Punkin, or by Punkin as a debtor-in-possession, shall constitute a default under this Deed of Trust and shall entitle Trustee and Beneficiary to all rights and remedies under Section 6.2 of this Deed of Trust.

ARTICLE II. OBLIGATIONS SECURED

2.1 **Obligations Secured.** Grantor makes this grant and assignment for the purpose of securing the following obligations (each, a "Secured Obligation" and collectively, the "Secured Obligations"):

- (a) performance of the obligations contained herein and in that certain Third Amended and Restated Credit Agreement dated as of the date hereof to which Borrower and Beneficiary are parties, as the same may be amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time (the "Credit Agreement"), which Credit Agreement provides for, among other things, the construction of certain improvements on the Subject Property; and
- (b) payment to Beneficiary of all sums at any time owing and performance of all other obligations arising under or in connection with (i) that certain Second Amended and Restated Hamilton Term Note dated as of September 1, 2016, in the original principal amount of Six Million Seven Hundred Fifty Three Thousand Eight Hundred Dollars (\$6,753,800), with interest as provided therein, executed by Janicki and payable to Beneficiary or its order, (ii) that certain Second Amended and Restated Punkin Center Term Note dated as of September 1, 2016, in the original principal amount of One Million Nine Hundred Seventy Two Thousand Eight Hundred Thirty Dollars (\$1,972,830), with interest as provided therein, executed by Punkin and payable to Beneficiary or its order, (iii) that certain Second Amended and Restated Sedro-Woolley Term Note dated as of September 1, 2016, in the original principal amount of Six Million Five Hundred Seventy Six Thousand Two Hundred Dollars (\$6,576,200), with interest as provided therein, executed by Janicki and payable to Beneficiary or its order, and (iv) that certain Construction Loan Note dated as of the date hereof, in the original principal amount of Nine Million Seven Hundred Thirty Five Thousand Dollars (\$9,735,000), with interest as provided therein, executed by PCW (together with Janicki and Punkin, individually and collectively, "Borrower") and payable to Beneficiary or its order (as each may be amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time, individually and collectively, the "Note"), together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodations evidenced by the Note, whether or not specifically referenced therein; and
- (c) payment and performance of all obligations of Grantor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Grantor; and
- (d) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby; and

(e) payment to Beneficiary of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with Beneficiary in connection with any Secured Obligation; and

(f) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(g) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) the conversion of the Construction Loan to the Permanent Loan as contemplated by the Credit Agreement, (ii) modifications, extensions or renewals at a different rate of interest, or (iii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and includes, and shall be deemed to include, any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation, together with all costs of collecting the Secured Obligations.

2.3 Incorporation; Future Advances. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and that this Deed of Trust secures future advances, and to have notice, if provided therein, that: (a) the Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time. Funds may be advanced by Beneficiary, repaid by Grantor and subsequently readvanced by Beneficiary. Absent Default under the terms of the Secured Obligations, all advances thereunder by Beneficiary are obligatory and are secured by this Deed of Trust. All such obligatory advances shall have the same priority as the funds initially advanced under any such Secured Obligation.

ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. For the purposes and upon the terms and conditions set forth herein, Grantor hereby irrevocably assigns to Beneficiary all of Grantor's right, title and interest in, to and under all present and future leases, licenses, rental agreements and other agreements of any kind relating to the management, leasing, operating, use or occupancy of any of the Subject Property or any portion thereof, whether existing as of the date hereof or at any time hereafter entered into, together with all subleases and other agreements for the use or occupancy of the Subject Property or any portion thereof, all guarantees of and security for any tenant's or lessee's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals and modifications thereto (each, a "Lease" and collectively, the "Leases"), together with any and all other rents, issues, revenues, receipts, deposits,

and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Grantor under the Leases (collectively, "Rents"). This assignment shall not impose upon Beneficiary any duty to produce Rents from the Subject Property, nor cause Beneficiary to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property, or (d) directly or indirectly liable to Grantor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies, or powers granted to Beneficiary hereunder or to perform or discharge any obligation, duty or liability of Grantor arising under the Leases. This is an absolute assignment, not an assignment for security only, and Beneficiary's right to Rents is not contingent upon and may be exercised without taking possession of the Subject Property. Grantor agrees to execute and deliver to Beneficiary, within five (5) days of Beneficiary's written request, such additional documents as Beneficiary or Trustee may reasonably request to further evidence the assignment to Beneficiary of any and all Leases and Rents. Beneficiary or Trustee, at Beneficiary's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents.

3.2 Protection of Security. To protect the security of this assignment, Grantor agrees:

(a) At Grantor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Grantor assigns to Beneficiary all of Grantor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Grantor to exercise any such rights or powers without Beneficiary's prior written consent shall be a breach of the terms hereof.

(b) At Grantor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all costs of Beneficiary or Trustee, including reasonable attorneys' fees, in any such action in which Beneficiary or Trustee may appear.

(c) That, should Grantor fail to do any act required to be done by Grantor under a Lease, then Beneficiary or Trustee, but without obligation to do so and without notice to Grantor and without releasing Grantor from any obligation hereunder, may make or do the same in such manner and to such extent as Beneficiary or Trustee deems necessary to protect the security hereof, and, in exercising such powers, Beneficiary or Trustee may employ attorneys and other agents, and Grantor shall pay necessary costs and reasonable attorneys' fees incurred by Beneficiary or Trustee, or their agents, in the exercise of the powers granted herein. Grantor shall give prompt notice to Beneficiary of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Grantor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Beneficiary promptly upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per

annum payable under any Secured Obligation, and the same, at Beneficiary's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 License. Beneficiary confers upon Grantor a license ("License") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Default as hereinafter defined. Upon the occurrence of any Default, the License shall be automatically revoked, and Beneficiary or Trustee may, at Beneficiary's option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter, take possession of, manage and operate the Subject Property or any part thereof; (b) make, cancel, enforce or modify any Lease; (c) obtain and evict tenants, fix or modify Rents, and do any acts which Beneficiary or Trustee deems proper to protect the security hereof; and (d) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Deed of Trust. All payments thereafter collected by Grantor shall be held by Grantor as trustee under a constructive trust for the benefit of Beneficiary. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Grantor hereby relieves the tenants from any liability to Grantor by reason of relying upon and complying with any such notice or demand by Beneficiary. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Beneficiary or Trustee the right to possession, except as provided in this Deed of Trust.

ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 Security Interest. Grantor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Grantor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Subject Property; together with all Rents, other payments and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Grantor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with

the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences or any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Subject Property; all advance payments of insurance premiums made by Grantor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan documents, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Grantor's right, title and interest, now or hereafter acquired, to the payment of money from Beneficiary to Grantor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Grantor and Beneficiary in connection with the Note; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

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

4.2 Rights of Beneficiary. Upon the occurrence of a Default, Beneficiary shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Grantor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Grantor under or from the Collateral. Beneficiary may: (i) upon written notice, require Grantor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Grantor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

Grantor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice. Grantor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

4.3 Assignment of Leases Perfected. The assignment by Grantor of the Leases and Rents in this Article III is intended to be specific, perfected and choate upon the recording of this Deed of Trust as provided in RCW 7.28.230(3).

ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

5.1 **Warranty of Title; Use of Property.** Grantor warrants that, except as disclosed to Beneficiary prior to the date hereof in a writing which refers to this warranty, Grantor lawfully possesses and holds good and marketable unencumbered fee simple title to, or if permitted by Beneficiary in writing a leasehold interest in, the Subject Property without limitation on the right to encumber, as herein provided, subject only to those exceptions approved by Beneficiary in writing and that this Deed of Trust is a valid lien on the Subject Property and all of Grantor's interest therein. Grantor warrants that the Subject Property is not used principally for agricultural or farming purposes.

5.2 **Taxes and Assessments.** Subject to the right, if any, of Grantor to contest payment of the following pursuant to any other agreement between Grantor and Beneficiary, Grantor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided however, that Grantor shall have no obligation to pay any income taxes of Beneficiary. Promptly upon request by Beneficiary, Grantor shall furnish to Beneficiary satisfactory evidence of the payment of all of the foregoing. Beneficiary is hereby authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any of the foregoing.

5.3 **Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation when due. If Grantor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Beneficiary's rights in the Subject Property, then Beneficiary may (but is not obligated to), at Grantor's expense, take such action as it considers to be necessary to protect the value of the Subject Property and Beneficiary's rights in the Subject Property, including the retaining of counsel, and any amount so expended by Beneficiary will be added to the Secured Obligations and will be payable by Grantor to Beneficiary on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.

5.4 **Liens, Encumbrances and Charges.** Grantor shall promptly discharge any lien on the Subject Property not approved by Beneficiary in writing. Except as otherwise provided in any Secured Obligation or other agreement with Beneficiary, Grantor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

5.5 **Insurance.** Grantor shall insure the Subject Property against loss or damage by fire and such other risks as Beneficiary shall from time to time require. Grantor shall carry commercial general liability insurance, flood insurance as required by applicable law and such other insurance as Beneficiary may reasonably require, including without limitation, terrorism, business interruption insurance or loss of rental value insurance. Grantor shall maintain all required insurance at Grantor's expense, under policies issued by companies and in form and substance satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance, shall incur any liability for: (a) the existence, nonexistence, form or legal sufficiency thereof; (b) the solvency of any insurer; or (c) the payment of losses. All policies and certificates of insurance shall name Beneficiary as loss payee, and shall provide that the insurance cannot be terminated as to Beneficiary except upon a minimum of ten (10) days' prior written notice to Beneficiary. Promptly upon

any request by Beneficiary, Grantor shall deliver to Beneficiary the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

5.6 Tax and Insurance Impounds. At Beneficiary's option and upon its demand, Grantor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that amounts paid by Grantor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Grantor of the increased amount required for the payment thereof when due, and Grantor shall pay to Beneficiary such additional amount within thirty (30) days after notice from Beneficiary. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Beneficiary shall apply said amounts to the payment of, or at Beneficiary's sole option release said funds to Grantor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Beneficiary at its sole option may apply all or any part of said amounts to any Secured Obligation and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Grantor hereby grants and transfers to Beneficiary a security interest in all amounts so paid and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Beneficiary in its discretion may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Grantor, and no other party shall have any right of claim thereto.

5.7 Damages; Insurance and Condemnation Proceeds.

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting all or any part of or any interest in the Subject Property or Collateral; (ii) all other claims and awards for damages to or decrease in value of the all or any part of or any interest in Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Beneficiary. At the absolute discretion of Beneficiary, whether or not its security is or may be impaired, but subject to applicable law if any, and without regard to any requirement contained in any other Section hereof, Beneficiary may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and release all or any part of the proceeds to Grantor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided however, that in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of

the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiaries or its employees or agents.

(b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may impose any conditions on such use as Beneficiary deems necessary, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in Credit Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be in form and substance acceptable and satisfactory to Beneficiary; and (iv) the delivery to Beneficiary of evidence, in form and substance acceptable and satisfactory to Beneficiary, (A) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (B) of the continuation of Leases acceptable to and required by Beneficiary; (C) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (D) that there has been no adverse change in the financial condition or credit of Grantor and Borrower (if different from Grantor) and any guarantors since the date of this Deed of Trust; and (E) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Grantor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.8 Maintenance and Preservation of Subject Property. Subject to the provisions of any Secured Obligation, Grantor covenants:

- (a) to keep the Subject Property in good condition and repair;
- (b) except with Beneficiary's prior written consent, not to remove or demolish the Subject Property, nor alter, restore or add to the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;
- (c) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed, unless Beneficiary requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in the Section hereof entitled Damages; Insurance and Condemnation Proceeds;
- (d) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;
- (e) not to commit or permit waste of the Subject Property; and

(f) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

5.9 Hazardous Substances; Environmental Provisions. Grantor represents and warrants to Beneficiary as follows:

(a) Except as disclosed to Beneficiary in writing prior to the date hereof, to the best of Grantor's knowledge, the Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").

(b) To the best of Grantor's knowledge, the Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "Hazardous Materials Laws"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.

(c) To the best of Grantor's knowledge, there are no claims or actions pending or threatened against Grantor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Grantor shall promptly advise Beneficiary in writing upon Grantor's discovery of any occurrence or condition on the Subject Property or on any real property adjoining or in the vicinity of the Subject Property that does or could cause all or any part of the Subject Property to be contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

5.10 Protection of Security. Grantor shall, at Grantor's sole expense: (a) protect, preserve and defend the Subject Property and Collateral, and Grantor's title and right to possession of the Subject Property and Collateral against all adverse claims; (b) if Grantor's interest in the Subject Property is a leasehold interest or estate, pay and perform in a timely manner all obligations to be paid and/or performed by the lessee or tenant under the lease or other agreement creating such leasehold interest or estate; and (c) protect, preserve and defend the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee under this Deed of Trust against all adverse claims. Grantor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property and, if Grantor's interest in the Subject Property is a leasehold interest or estate, of any notice of default or demand for performance under the lease or other agreement pursuant to which such leasehold interest or estate was created or exists.

5.11 Acceptance of Trust; Powers and Duties of Trustee. Trustee accepts this trust when this Deed of Trust is executed. From time to time, upon written request of Beneficiary and, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Secured Obligations, Beneficiary, or Trustee at Beneficiary's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Subject Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Grantor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

5.12 Compensation; Exculpation; Indemnification.

(a) Grantor shall pay all Trustee's fees and reimburse Trustee for all expenses in the administration of this trust, including reasonable attorneys' fees. Grantor shall pay Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Grantor or any other person as a consequence of: (i) the exercise or non-exercise of any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under this Deed of Trust or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Grantor or any third party as a result of Beneficiary's failure to (whether by malfeasance, nonfeasance or refusal to act), lease the Subject Property after any Default or from any other act or omission of Beneficiary (regardless of whether the same constitutes negligence), in managing the Subject Property after any Default unless such loss is caused solely by the willful misconduct or gross negligence of Beneficiary; and no such liability shall be asserted or enforced against or imposed upon, Beneficiary, and all such liability is hereby expressly waived and released by Grantor.

(b) Unless due solely to Beneficiary's or Trustee's gross negligence or willful misconduct, Grantor shall indemnify Trustee and Beneficiary against, and hold them harmless from and against, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Grantor to perform Grantor's obligations; or (iv) by reason of any alleged obligation or undertaking of Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Grantor under this Deed of Trust. Grantor's

duty to indemnify Trustee and Beneficiary shall survive the payment, release, discharge or cancellation of the Secured Obligations and the release or reconveyance, in whole or in part, of this Deed of Trust.

(c) Grantor shall pay all indebtedness arising under this Section promptly upon demand by Trustee or Beneficiary, together with interest thereon from the date such indebtedness arises at the highest rate per annum payable under any Secured Obligation. Beneficiary may, at its option, add any such indebtedness to any Secured Obligation.

5.13 Substitution of Trustees. From time to time, by a writing signed and acknowledged by Beneficiary and recorded in each Office in which this Deed of Trust is recorded, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth the recordation date and any recording or other information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new Trustee.

5.14 Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation or applicable law, if the Subject Property or any interest therein shall be sold, transferred (including without limitation, where applicable, through sale or transfer of a majority or controlling interest of the corporate stock, or any general partnership, limited liability company or other similar interests, of Grantor), mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "Transfer"), without Beneficiary's prior written consent, THEN Beneficiary may, at its sole option, declare all Secured Obligations immediately due and payable in full. Grantor shall notify Beneficiary in writing of each Transfer within ten (10) days of the date thereof.

5.15 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or the Collateral, or in any manner obligated under any Secured Obligation (each, an "Interested Party"), Beneficiary may, from time to time, release any Interested Party from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property, the Collateral or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of, or the security interests created by, this Deed of Trust upon the Subject Property and/or the Collateral.

5.16 Reconveyance. Upon Beneficiary's written request, and solely to the extent required by applicable law upon surrender of this Deed of Trust and every note or other instrument setting forth any Secured Obligations to Trustee for cancellation, Trustee shall reconvey, without warranty, the Subject Property, or that portion thereof then covered hereby, from the lien of this Deed of Trust. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a

reassignment of all future Rents to the person or persons legally entitled thereto. Upon Beneficiary's demand, Grantor shall pay all costs and expenses incurred by Beneficiary in connection with any reconveyance.

5.17 Subrogation. Beneficiary shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any Secured Obligation.

5.18 Grantor Different From Obligor ("Third Party Grantor"). As used in this Section, the term "Obligor" shall mean each person or entity obligated in any manner under any of the Secured Obligations; and the term "Third Party Grantor" shall mean (1) each person or entity included in the definition of Grantor herein and which is not an Obligor under all of the Secured Obligations, and (2) each person or entity included in the definition of Grantor herein if any Obligor is not included in said definition.

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

(b) Waivers.

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

(ii) Each Third Party Grantor waives any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of any Obligor or any other person; (B) the cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of any Obligor which is a corporation, partnership or other type of entity, or any defect in the formation of any such Obligor; (D) the application by any Obligor of the proceeds of any Secured Obligation for purposes other than the purposes represented by any Obligor to, or intended or understood by, Beneficiary or any Third Party Grantor; (E) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of any Obligor or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Beneficiary against any Obligor; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Beneficiary give any notice of acceptance of this Deed of Trust. Until all Secured Obligations shall have been paid in full, no Third Party Grantor shall have any right of subrogation, and each Third Party Grantor waives any right to enforce any remedy which Beneficiary now has or may hereafter have against any Obligor or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Beneficiary. Each Third Party Grantor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys such Third Party Grantor's rights of subrogation or such Third Party Grantor's rights to proceed against any Obligor for reimbursement; or (2) any loss of rights any Third Party Grantor may suffer by reason of any rights, powers or remedies of any Obligor in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging any Obligor's obligations, whether by operation of the Washington Deed of Trust Act at Ch. 61.24 RCW as from time to time amended, or otherwise, including any rights any Third Party Grantor may have to a fair market value hearing to determine the size of a deficiency following any trustee's foreclosure sale or other disposition of any security for any portion of the Secured Obligations.

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

ARTICLE VI. DEFAULT PROVISIONS

6.1 Default. The occurrence of any of the following shall constitute a "Default" under this Deed of Trust: (a) Grantor shall fail to observe or perform any obligation or agreement contained herein; (b) any representation or warranty of Grantor herein shall prove to be incorrect, false or misleading in any material respect when made; (c) any default in the payment or performance of any obligation, or any defined event of default, under any provisions of the Note or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation; or (d)

Grantor shall default in the performance or observance of any term, covenant or condition required to be observed by Grantor under the Ground Lease and such default shall not have been remedied or waived within any cure period provided to Grantor under the Ground Lease.

6.2 Rights and Remedies. Upon the occurrence of any Default, and at any time thereafter, Beneficiary and Trustee shall have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable in full.

(b) With or without notice, without releasing Grantor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Grantor and, in connection therewith: (i) to enter upon the Subject Property, possess, manage and operate the Subject Property or any part thereof, and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Grantor under this Deed of Trust, and Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Grantor waives the defenses of laches and any applicable statute of limitations.

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property and/or the Collateral as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Grantor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Grantor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(f) To execute or cause Trustee to execute a written notice of such Default and of its election to cause the Subject Property to be sold in accordance with the Washington Deed of Trust Act at Ch. 61.24 RCW to satisfy the Secured Obligations. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor, except as otherwise required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such

manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Grantor nor any other person or entity shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may postpone any sale of the Subject Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Grantor or Beneficiary, may purchase at such sale.

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance with the Section hereof entitled Application of Foreclosure Sale Proceeds, all in such order and manner as Beneficiary shall determine in its sole discretion.

(h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Grantor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Grantor and Beneficiary or previously discussed by Grantor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

6.3 Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of Trustee, and of this trust, including costs of evidence of title and attorneys' fees in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in such order and amounts as Beneficiary in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Application of Other Sums. All Rents or other sums received by Beneficiary or any agent or receiver hereunder, less all costs and expenses incurred by Beneficiary or such agent or receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 No Cure or Waiver. Neither Beneficiary's, Trustee's or any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of, or failure to exercise, any other right or remedy by Beneficiary, Trustee or any receiver shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Grantor has cured all other Defaults), or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Deed of Trust.

6.6 Costs, Expenses and Attorneys' Fees. Grantor agrees to pay to Beneficiary promptly upon demand the full amount of all payments, advances, charges, costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Beneficiary's in-house counsel), expended or incurred by Trustee or Beneficiary pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) relating to Grantor or in any way affecting any of the Subject Property and/or the Collateral or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Grantor with interest from the date of demand until paid in full at the highest rate per annum payable under any Secured Obligation.

6.7 Power to File Notices and Cure Defaults. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns as Grantor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute a Default, to perform any obligation of Grantor hereunder; provided however, that Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary, and Beneficiary shall not be liable to Grantor or any other person or entity for any failure to act under this Section.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Beneficiary and Trustee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Grantor and Beneficiary. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Beneficiary shall not be deemed to have waived the agreement contained herein

that time is of the essence, nor shall Beneficiary be deemed to have waived either its right to require prompt payment or performance when due or the remainder of the Secured Obligations or its right to consider the failure to so pay or perform, a Default.

ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 No Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary specifically consents to a merger in writing.

7.2 Execution of Documents; Incorporation of Exhibits/Schedules. Grantor agrees, upon demand by Beneficiary or Trustee, to execute any and all commercially reasonable documents and instruments required to effectuate the provisions hereof. For all intents and purposes, all exhibits, schedules or other items attached hereto are deemed incorporated into this Deed of Trust by such attachment.

7.3 Right of Inspection. Beneficiary or its agents or employees may enter onto the Subject Property at any reasonable time, upon at least 24 hours' prior notice (except in the case of an emergency), for the purpose of inspecting the Subject Property and ascertaining Grantor's compliance with the terms hereof.

7.4 Notices, Requests for Notice. All notices, requests and demands which Grantor or Beneficiary is required or may desire to give to the other party must be in writing, delivered to Beneficiary at the following address:

WELLS FARGO BANK, NATIONAL ASSOCIATION
MAC P6478-059
205 108th Ave NE, Suite 500
Bellevue, WA 98004
Attention: Lachlan Pegg

and to Grantor at its address set forth at the signature lines below, or at such other address as either party shall designate by written notice to the other party in accordance with the provisions hereof. Any Grantor whose address is set forth below hereby requests that a copy of any notice of default and notice of sale be mailed to such Grantor at that address. Failure to insert an address shall constitute a designation of Grantor's last known address as the address for any such notice. Trustee's address is 1700 Lincoln Street, 3rd Floor, Denver, CO 80203.

7.5 Successors; Assignment. This Deed of Trust shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; provided however, that this Section does not waive the provisions of the Section hereof entitled Due on Sale or Encumbrance. Beneficiary reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Beneficiary's rights and benefits under the Note, any and all other Secured Obligations and this Deed of Trust. In connection therewith, Beneficiary may disclose all documents and information which Beneficiary now has or hereafter acquires relating to the Subject Property or the Collateral, all or any of the Secured Obligations and/or Grantor and, as applicable, any partners, joint venturers or members of Grantor, whether furnished by any Grantor or otherwise.

7.6 Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term "Subject Property" means all and any part of or interest in the Subject Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Deed of Trust, and shall be disregarded in the interpretation of any portion of this Deed of Trust; (d) if more than one person or entity has executed this Deed of Trust as "Grantor," the obligations of all such Grantors hereunder shall be joint and several; and (e) all terms of Exhibit A, and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Deed of Trust by this reference.

7.7 Severability of Provisions. If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust.

7.8 Recourse to Separate Property. Any married person who executes this Deed of Trust as a Grantor and who is obligated under any Secured Obligation agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.

7.9 Nonagricultural Use. The Subject Property is not used principally for agricultural or farming purposes.

7.10 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Washington.

7.11 Advertising. In connection with the credit facilities extended pursuant to the Credit Agreement, Grantor hereby agrees that Wells Fargo & Company and its affiliates and/or subsidiaries (collectively, "Wells Fargo") may publicly identify details of the credit facilities in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, email, or internet advertising or communications. Such details may include the name of the Subject Property, the address of the Subject Property, the amount of the credit facilities, the date of the closing and a description of the size and/or location of the Subject Property.

7.12 Waiver of Marshaling Rights. Grantor, for itself and for all parties claiming through or under Grantor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien securing the Secured Obligations. Beneficiary shall have the right to sell the Subject Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may, in its sole discretion, designate.

7.13 Arbitration.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to this Deed of Trust and its negotiation, execution, collateralization,

administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court. Failure to timely file the demand for arbitration as ordered by the court will result in that party's right to demand arbitration being automatically terminated.

(b) **Governing Rules.** Any arbitration proceeding will (i) proceed in a location in Washington selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) **No Waiver of Provisional Remedies, Self-Help and Foreclosure.** The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) **Arbitrator Qualifications and Powers.** Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Washington or a neutral retired judge of the state or federal judiciary of Washington, in either case with a minimum of ten years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Washington and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Washington Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not

constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) **Discovery.** In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) **Class Proceedings and Consolidations.** No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed this Deed of Trust or any other contract, instrument or document relating to any Secured Obligation, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) **Payment of Arbitration Costs and Fees.** The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) **Real Property.** Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration unless: (i) Beneficiary specifically elects in writing to proceed with the arbitration; or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Washington, thereby agreeing that all Secured Obligations, and all mortgages, liens and security interests securing any of the Secured Obligations, shall remain fully valid and enforceable.

(i) **Miscellaneous.** To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

(j) **Small Claims Court.** Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.


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

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first set forth above.

BENEFICIARY:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Name: Eochlan Pegg
Title: Vice President

GRANTOR:

PUNKIN CENTER WEST, LLC

By: _____
Name: Peter Janicki
Title: President

JANICKI INDUSTRIES, INC.

By: _____
Name: Peter W. Janicki
Title: Chief Executive Officer

By: _____
Name: John P. Janicki
Title: President

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

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first set forth above.

BENEFICIARY:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Name: Lachlan Pegg
Title: Vice President

GRANTOR:

PUNKIN CENTER WEST, LLC

By: Peter Janicki
Name: Peter Janicki
Title: President

JANICKI INDUSTRIES, INC.

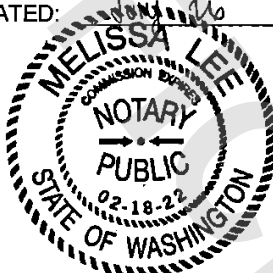
By: Peter W. Janicki
Name: Peter W. Janicki
Title: Chief Executive Officer

By: John P. Janicki
Name: John P. Janicki
Title: President

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that Lachlan Pegg is the person who personally appeared before me, and said person acknowledged that he signed this instrument, and that he is authorized to execute the instrument, and acknowledged it as the Vice President of **Wells Fargo Bank, National Association**, and that he was authorized to execute the instrument and that said instrument was the free and voluntary act and deed of such parties for the uses and purposes mentioned in this instrument.

DATED: August 26, 2018



Melissa Lee

Print Name: Melissa Lee
 NOTARY PUBLIC for the State of Washington,
 residing at Bellevue, WA.

My appointment expires: 02/18/2022

STATE OF WASHINGTON)
) ss.
 COUNTY OF _____)

I certify that I know or have satisfactory evidence that Peter Janicki is the person who personally appeared before me, and said person acknowledged that he signed this instrument, and that he is authorized to execute the instrument, and acknowledged it as the President of **Punkin Center West, LLC**, a Washington limited liability company, and that he was authorized to execute the instrument and that said instrument was the free and voluntary act and deed of such parties for the uses and purposes mentioned in this instrument.

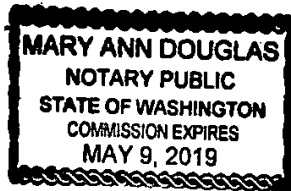
DATED: _____, 2018

Print Name: _____
 NOTARY PUBLIC for the State of Washington,
 residing at _____

My appointment expires: _____

My appointment expires:_____

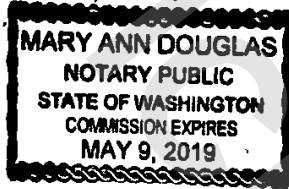
My appointment expires: MAY 9, 2019



STATE OF WASHINGTON)
COUNTY OF SKAGIT) ss.

I certify that I know or have satisfactory evidence that Peter W. Janicki is the person who personally appeared before me, and said person acknowledged that he signed this instrument, and that he is authorized to execute the instrument, and acknowledged it as the Chief Executive Officer of Janicki Industries, Inc., a Washington corporation, and that he was authorized to execute the instrument and that said instrument was the free and voluntary act and deed of such parties for the uses and purposes mentioned in this instrument.

DATED: July 27, 2018, 2018



Mary Ann Douglas

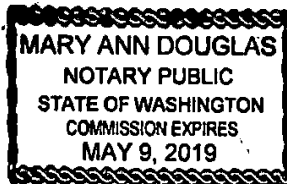
Print Name: MARY ANN DOUGLAS
NOTARY PUBLIC for the State of Washington,
residing at SKAGIT COUNTY

My appointment expires: MAY 9, 2019

STATE OF WASHINGTON)
COUNTY OF SKAGIT) ss.

I certify that I know or have satisfactory evidence that John P. Janicki is the person who personally appeared before me, and said person acknowledged that he signed this instrument, and that he is authorized to execute the instrument, and acknowledged it as the President of Janicki Industries, Inc., a Washington corporation, and that he was authorized to execute the instrument and that said instrument was the free and voluntary act and deed of such parties for the uses and purposes mentioned in this instrument.

DATED: July 27, 2018



Mary Ann Douglas

Print Name: MARY ANN DOUGLAS
NOTARY PUBLIC for the State of Washington,
residing at SKAGIT COUNTY

My appointment expires: MAY 9, 2019

EXHIBIT A
(Description of Property)

Exhibit A to Amended and Restated Construction Deed of Trust with Absolute Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by PUNKIN CENTER WEST, LLC, as Grantor, JANICKI INDUSTRIES, INC., as Grantor, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Beneficiary, dated as of August 1, 2018.

Description of Property

PARCEL A

The North Half of the Northwest Quarter; and the Northwest Quarter of the Northeast Quarter of Section 14, Township 35 North, Range 6 East of the Willamette Meridian, Skagit County, Washington; EXCEPT the following described tracts:

1. The North 50 feet thereof, as conveyed to the Puget Sound and Baker River Railroad Company, by deeds recorded in Volume 70 of deeds, Page 185, and in Volume 64 of deeds, Page 603, records of Skagit County, Washington;
2. The North 15 feet of the Northeast Quarter of the Southeast Quarter of the Northwest Quarter of the Northwest Quarter;
3. That portion of said property conveyed to Puget Sound Power and Light Company, a corporation, by deed dated April 3, 1957, filed April 4, 1957, under Auditor's File No. 549528, records of Skagit County, Washington, also described therein as the South 100 feet of the West 100 feet of the North 739.62 feet of that portion of the Northwest Quarter of the Northwest Quarter of said section, lying Easterly of the county road known as the Ensley Road (Cabin Creek Road) in Hamilton, Washington;
4. That portion conveyed by Thomas Cook to the State of Washington by deed dated February 5, 1958, filed February 20, 1958, under Auditor's File No. 562027, records of Skagit County, Washington and recorded in Volume 292 of deeds, at Page 621, records of Skagit County, Washington;
5. That portion conveyed to Skagit County, Washington, by deed dated July 7, 1962, recorded July 30, 1962, as Auditor's File No. 624432, records of Skagit County, Washington, and recorded in Volume 324 of deeds, Page 715, described as follows:

A tract of land 100 feet in width, lying 50 feet on each side of the following centerline:

Beginning at a point on the East line of said Northwest Quarter of the Northwest Quarter which 672.67 feet South of the Northeast Quarter corner thereof; thence South 56°12'20" West 1706.36 feet to the West end of the State Highway Bridge and the terminal point of this line;

ALSO that portion of the Northwest Quarter of the Southwest Quarter of the Northwest Quarter of said Section 14, lying Northerly of the Great Northern Railroad right of way;

EXCEPT road rights of way;

AND EXCEPT a 50 strip North of and parallel with said Great Northern Railroad right of way;

A-1

Janicki – Leasehold Deed of Trust – Exhibit

AND ALSO EXCEPT that portion of said premises lying Westerly of Harvey Davis Creek;

AND ALSO EXCEPT that portion deeded to the State of Washington for Primary State Highway No. 16, by deed dated August 12, 1964, recorded September 21, 1964, under Auditor's File No. 656103, records of Skagit County, Washington;

6. That portion conveyed to IMC Industry Group Inc., by instrument recorded under Auditor's File No. 8610230040, records of Skagit County, Washington;

7. Those portions conveyed to the State of Washington by instruments recorded under Auditor's File Nos. 562026, 654609, 659282, 659518, and 659519 records of Skagit County, Washington;

ALSO any portion thereof taken by decree of appropriation in Skagit County Superior Court Cause No. 27870;

EXCEPT any portion lying in the bed of Alder Creek and Alder Slough;

AND EXCEPT from all the above any portion lying within any Skagit County road right of way, Washington State Highway, Town of Hamilton Street or the Puget Sound and Baker River Railroad right of way.

8. That portion lying North of State Route 20.

9. Lot 1 Town of Hamilton Short Plat No. 94-01, approved February 8, 1994, and recorded February 11, 1994, in Volume 11 of Short Plats, page 58, under Auditor's File No. 9402110124, records of Skagit County, Washington; being a portion of the Northwest Quarter of the Northeast Quarter.

TOGETHER WITH that portion of vacated Ensley Road as may attach by operation of law;

ALSO EXCEPT those portions comprising the following Skagit County tax parcels:

P41175/ 350614-0-006-0001, P41178/ 350614-0-009-0008, P41193/ 350614-1-008-0007, P41194/ 350614-1-009-0006, P41195/ 350614-1-010-0003, P41196/350614-1-011-0002, P41197/ 350614-1-012-0001, P41202/ 350614-2-002-0001, P41203/ 350614-2-003-0000, P41215/ 350614-2-016-0005, and that portion of P41204/350614-2-001-0002 lying South and East of Muddy Creek.

Situated in Skagit County, Washington.

PARCEL F

The West 70 feet of the North 100 feet of the South half of the Northwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 14, Township 35 North, Range 6 East of the Willamette Meridian, Skagit County, Washington;

EXCEPT county road.

Situated in Skagit County, Washington.

End of Exhibit A

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Janicki – Leasehold Deed of Trust – Exhibit