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After Filing Return To:

Certain Lending, Inc.
300 California Street, Suite 210
San Francisco, California 94104
Attention: **Tony Ochoa**
**MIN: 1015061-0000001321-2**

CHICAGO TITLE
620041060

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

This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") is made as of **January 16, 2020**, by **APC Construction LLC, a Washington Limited Liability Company**, as grantor ("**Grantor**"), to **Chicago Title Company of Washington**, as trustee ("**Trustee**"), Certain Lending, Inc., a Delaware corporation, its successors and assigns, as lender and beneficiary under this Deed of Trust ("**Lender**" or "**Beneficiary**"), and Mortgage Electronic Registration Systems, Inc., its successors and assigns, ("**MERS**") as designated Nominee for Lender and Beneficiary of the Deed of Trust.

**DEFINITIONS**

**Abbreviated Legal Description** (lot, block and plat name, or section-township-range):

**ptn Lt 9 and Lt 10, Blk 45 First Addition to the Town of Sedro**

☐ Additional legal description is on Exhibit A of document

**Assessor's Property Tax Parcel Account Number(s): 4150-045-010-0003**

**Grantor: APC Construction LLC, a Washington Limited Liability Company**

**Trustee: Chicago Title Company of Washington**

**Beneficiary or Lender**: Certain Lending, Inc., a Delaware corporation, and its successors and assigns.

**MERS**: "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is the Nominee for Lender, and its successors and assigns, and is acting solely for Lender. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. MERS

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is appointed as the Nominee for Lender to exercise the rights, duties and obligations of Lender as Lender may from time to time direct, including but not limited to appointing a successor trustee, assigning, or releasing, in whole or in part this Deed of Trust, foreclosing or directing Trustee to institute foreclosure of this Deed of Trust, or taking such other actions as Lender may deem necessary or appropriate under this Deed of Trust. The term "MERS" includes any successors and assigns of MERS. This appointment shall inure to and bind MERS, its successors and assigns, as well as Lender, until MERS' Nominee interest is terminated.

**Nominee**: One designated to act for another as its representative for a limited purpose.

**ARTICLE 1** **GRANT IN TRUST.**

Section 1.1 **The Secured Property**. For the purpose of securing payment and performance of the Secured Obligations defined in Section 2.1 (Purpose of Securing) below, Grantor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Grantor now has or may later acquire in the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as hereinafter defined) being hereinafter collectively referred to as the "**Secured Property**"):

(a) All estate, right, title, interest, claim and demand whatsoever which Grantor now has or hereafter acquires, either in law or in equity, in and to the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land, and all apparatus and equipment now or hereafter attached in any manner to the Land or any building on the Land, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the "**Improvements**"; and together with the Land, the "**Premises**");

(c) All easements and rights of way appurtenant to the Land; all crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all development rights or credits and air rights; all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the Land; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Land;

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(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Land or the Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing;

(e) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or the other property described above or any part of them; and

(f) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Lender, as the Beneficiary under this Deed of Trust, designates MERS as the Nominee for Lender. Any notice required by applicable law or this Deed of Trust to be served on Lender must be served on MERS as the designated Nominee for Lender. Grantor understands and agrees that MERS, as the designated Nominee for Lender, has the right to exercise any or all interests granted by Grantor to Lender, including, but not limited to, the right to foreclose and sell the Secured Property; and to take any action required of Lender including, but not limited to, assigning and releasing this Deed of Trust, and substituting a successor trustee.

Section 1.2 **Fixture Filing**. This Deed of Trust constitutes a financing statement filed as a fixture filing under the Washington Uniform Commercial Code, as amended or recodified from time to time, covering any Secured Property which now is or later may become a fixture attached to the Land or any building located thereon.

**Financing Statements**. Grantor hereby irrevocably authorizes Beneficiary at any time and from time to file in any filing office in any Uniform Commercial Code jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Secured Property, without the signature of Grantor where permitted by law, and describing the collateral as "all assets" or "all personal property" or such other similar description as Beneficiary determines in its sole discretion in accordance with the Uniform Commercial Code. Grantor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any Uniform Commercial Code jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect

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to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary's prior written consent, subject to Grantor's rights under Section 9-509(d)(2) of the Uniform Commercial Code. Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. "**Uniform Commercial Code**" means the Uniform Commercial Code as enacted and in effect in the state where the Land is located (and as it may from time to time be amended); provided that, to the extent that the Uniform Commercial Code is used to define any term herein or in any other Loan Document and such term is defined differently in different Articles or Divisions of the Uniform Commercial Code, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Section 1.3

**THE REAL PROPERTY CONVEYED UNDER THIS DEED OF TRUST IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.**

## ARTICLE 2 THE SECURED OBLIGATIONS.

Section 2.1 **Purpose of Securing**. Grantor makes the grant, conveyance, transfer and assignment set forth in Article 1 (Grant in Trust), makes the assignment set forth in Article 3 (Assignment of Leases and Rents), and grants the security interest set forth in Article 4 (Security Interest in Related Personalty), all for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

(a) Payment of the indebtedness evidenced by that certain Promissory Note of even date herewith given by Grantor in favor of Beneficiary, pursuant to which Beneficiary made a loan to Grantor in the maximum principal amount of **Two hundred thirty-five thousand, four hundred forty-seven and 00/100 Dollars ($235,447.00)**, and having a final maturity date of **January 17, 2021** (as the same may be increased, renewed, amended, restated, or otherwise modified from time to time,

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the "**Promissory Note**"), together with all interest, late charges, prepayment fees, additional interest, collection costs, fees, and expenses as provided in the Promissory Note; this would be the current note;

(b) Payment and performance of all obligations of Grantor under this Deed of Trust and each other deed of trust or mortgage securing a Promissory Note;

(c) Prompt and complete performance and observance of each and every covenant, obligation, or agreement of Grantor contained in this Deed of Trust and each other deed of trust or mortgage securing the Promissory Note, or contained in any other document or instrument given by Grantor to further evidence or secure the indebtedness represented by the Promissory Note, but excluding any separate environmental indemnity; and

(d) Payment of any additional sums (and accrued interest) that may be loaned or advanced by Beneficiary to Grantor under any promissory note or notes evidencing loans that specifically state that they are secured by this Deed of Trust.

This Deed of Trust also secures payment of all obligations of Grantor under the Promissory Note which arise after the Promissory Note is extended, renewed, modified or amended pursuant to any written agreement between Grantor and Beneficiary, and all obligations of Grantor under any successor agreement or instrument which restates and supersedes the Promissory Note in its entirety.

This Deed of Trust does not secure any obligation which expressly states that it is unsecured, whether contained in the foregoing Promissory Note or in any other document, agreement or instrument. Without limiting the generality of the foregoing, this Deed of Trust does not and shall not in any event be deemed to, secure the obligations of Grantor owing to Beneficiary under the Environmental Indemnity executed in connection with the foregoing Promissory Note or any obligations that are the substantial equivalent thereof.

Section 2.2 **Terms of Secured Obligations**. All Persons who may have or acquire an interest in all or any part of the Secured Property will be considered to have notice of, and will be bound by, the terms of the Promissory Note described in Section 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Promissory Note that permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS.

Section 3.1 **Assignment**. Grantor assigns to Beneficiary (i) all existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any

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part of the Secured Property, whether written or oral and whether for a definite term or month to month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (hereinafter called the "**Leases**"), and (ii) all rents, royalties, issues, profits, revenue, income and proceeds of the Secured Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "**Rents**"), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Secured Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Secured Property, any sums that may become due and payable to Grantor as bonus or royalty payments, and any damages or other compensation payable to Grantor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section 3.1. This assignment of Rents is intended as security for the Secured Obligations, pursuant to RCW 7.28.230 and, upon recording of this Deed of Trust, shall immediately perfect the security interest in such Rents in Beneficiary and shall not require any further action by Beneficiary to be perfected as to any subsequent purchaser, mortgagee, or assignee of any interest in the Secured Property. The lien created by this assignment shall, when recorded, be deemed specific, perfected, and choate.

Section 3.2 **Grant of License**. Notwithstanding the provisions of Section 3.1, Beneficiary hereby confers upon Grantor a license ("**License**") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as defined in the Promissory Note) shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Grantor, and without regard to the adequacy of the security for the Secured Obligations.

Section 3.3 **Leases**. Grantor represents and warrants that: (i) the Leases are in full force and effect and have not been modified or amended; (ii) the Rents have not been waived, discounted, compromised, setoff or paid more than one (1) month in advance; (iii) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents; and (iv) neither Grantor nor the lessees and tenants are in default under the Leases.

Section 3.4 **Performance of Leases**. Grantor shall (i) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (ii) give prompt notice to Beneficiary of any notice received by Grantor of default thereunder or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice; and (iii) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder.

Section 3.5 **Modification of Leases**. Grantor, without the prior written consent of Beneficiary, shall not: (i) cancel or accept the surrender of any Lease; (ii) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Beneficiary; (iii) accept any Rents more than one (1) month in advance of the accrual thereof; or (iv) do or permit anything to be done, the doing of which, or omit or refrain from

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doing anything, the omission of which, could be a breach or default under the terms of any Lease or a basis for termination thereof.

Section 3.6 **Beneficiary**. Beneficiary does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Grantor as though this assignment had not been made. Beneficiary shall not be liable for the failure or inability to collect any Rents.

Section 3.7 **Mortgagee In Possession**. Neither the assignment of Rents and Leases contained herein or in any separate assignment nor the exercise by Beneficiary of any of its rights or remedies thereunder or in connection therewith, prior to Beneficiary obtaining actual possession of the Secured Property as provided in Articles 6 (Remedies) hereof, shall constitute Beneficiary a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Secured Property or the occupancy, operation or use thereof. In the event Beneficiary obtains actual possession of the Secured Property as provided in Articles 6 (Remedies) hereof, Beneficiary shall have the rights, and Beneficiary's liability shall be limited, as provided in that Section.

## ARTICLE 4 SECURITY INTEREST IN RELATED PERSONALTY.

Section 4.1 **Grant of Security Interest**. Grantor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Grantor's right, title and interest, whether presently existing or hereafter acquired in and to all of the following property (collectively, the "**Personalty**"):

(a) All goods, inventory, accounts, general intangibles, software, investment property, instruments, letters of credit, letter of credit rights, deposit accounts, documents, chattel paper and supporting obligations, as each such term is presently or hereafter defined in the Uniform Commercial Code, and all other personal property of any kind or character, now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Secured Property, including, without limitation, furniture, furnishings, materials, supplies, tools, equipment, machinery, money, insurance proceeds, accounts, contract rights, software, trademarks, goodwill, promissory notes, electronic and tangible chattel paper, payment intangibles, documents, trade names, licenses and/or franchise agreements (to the extent assignable), rights of Grantor under leases of fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and commercial tort claims

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arising from the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Secured Property;

(b) All reserves, escrows or impounds required under Section 5.20 (Reserves) and all deposit accounts (including accounts holding security deposits) maintained by Grantor with respect to the Secured Property;

(c) All crops growing or to be grown on the Land (and after severance from the Land); all standing timber upon the Land (and after severance from the Land); all sewer, water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and all evidence of ownership rights pertaining to such water or water rights, ownership of which affect the Land; and all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of any part of the Premises, and all amendments and modifications thereof;

(d) To the extent assignable, all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Secured Property;

(e) All permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Land, Improvements, or other Secured Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies relating to the Land and the Improvements, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or other Secured Property or any part of them; and

(f) All substitutions, replacements, additions, and accessions to any of the above property, and all books, records and files relating to any of the above property, including, without limitation, all general intangibles related to any of the above property and all proceeds of the above property.

## ARTICLE 5 RIGHTS AND DUTIES OF THE PARTIES.

Grantor warrants, represents and covenants to Beneficiary as follows:

Section 5.1 **Title to Secured Property and Lien of This Instrument**. Grantor lawfully possesses and holds fee simple title to all of the Land and the Improvements,

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and owns the Secured Property free and clear of any liens, claims or interests, except the Permitted Encumbrances, and has rights and the power to transfer each item of the Secured Property. This Deed of Trust creates a valid, enforceable first priority lien on, and security interest against, as applicable, the Secured Property. Grantor will cooperate with Beneficiary in obtaining control (for lien perfection purposes under the Uniform Commercial Code) with respect to any Secured Property consisting of deposit accounts, investment property, letter of credit rights or electronic chattel paper.

Section 5.2 **First Lien Status; Protection of Beneficiary's Security**. At Grantor's sole expense, Grantor shall preserve, protect and defend (a) the first lien and security interest status of this Deed of Trust and the other Loan Documents, (b) title to and right of possession of the Secured Property, and (c) the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Grantor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim. If any such action or proceeding is commenced or if Beneficiary or Trustee is made a party to any such action or proceeding by reason of this Deed of Trust, or if Grantor fails to perform any obligation on its part to be performed hereunder, then Beneficiary, in its discretion, may make any appearances, disburse any sums, make any entries upon the Premises and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust, to remedy Grantor's failure to perform its obligations (without, however, waiving any default by Grantor) or otherwise to protect Beneficiary's interests. Grantor will pay all losses, damages, fees, costs and expenses, including reasonable attorneys' fees, of Beneficiary and Trustee thus incurred. This paragraph shall not be construed to require Beneficiary or Trustee to incur any expenses, make any appearances or take any actions.

Section 5.3 **Payment and Performance**. Grantor shall pay and perform the Secured Obligations in full when they are due and required to be paid and performed as provided in the Loan Documents.

Section 5.4 **Payment of Taxes, Utilities, Liens and Charges**.

(a) Taxes and Assessments. Grantor agrees to pay prior to delinquency directly to the payee thereof all taxes, levies, charges and assessments (including without limitation, assessments on appurtenant water stock and non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Premises or this Deed of Trust, or which may cause any decrease in the value of the Secured Property or any part of it. Upon request, Grantor shall promptly furnish to Beneficiary all notices of amounts due under this subparagraph and all receipts evidencing such payments. Grantor may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Grantor's expense and Grantor shall not be obligated to pay such taxes or assessments while such contest is pending so long as (i) the Premises is

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not thereby subjected to imminent loss or forfeiture and, (ii) if Grantor has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with Beneficiary or provides other security satisfactory to Beneficiary in its sole discretion.

(b) Utilities. Grantor will pay when due all utility charges and assessments for services furnished the Premises.

(c) Liens and Charges. Grantor will pay when due the claims of all Persons supplying labor or materials at the request of or with authorization from Grantor to or in connection with the Premises. Without waiving the restrictions of Section 5.17 (Restrictions on Transfer or Encumbrance of the Premises) hereof, Grantor will promptly discharge any lien or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Premises. Notwithstanding the foregoing provisions of this paragraph, Grantor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any mechanic's lien, but only if (i) Grantor notifies Beneficiary in writing at least ten (10) days in advance of the expected commencement of such proceedings, (ii) no portion of the Premises is in danger of being sold or forfeited by virtue of, or during the duration of, such proceedings, (3) if required by Beneficiary, Grantor deposits with Beneficiary reserves sufficient to pay the contested mechanic's lien in full, plus any interest and costs that may be assessed or recoverable in connection therewith, through the proceedings or otherwise, and (4) Grantor furnishes whatever additional security is required in the proceedings or is reasonably requested by Beneficiary in connection with allowing Grantor to commence the proceedings.

Section 5.5 **Maintenance of Rights of Way, Easements and Licenses**. Grantor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, and entitlements necessary for the use of the Secured Property and will not, without the prior consent of Beneficiary, not to be unreasonably withheld, conditioned or delayed, actively consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Secured Property. Grantor shall comply with all restrictive covenants affecting the Secured Property, and all zoning ordinances and other public or private restrictions as to the use of the Secured Property.

Section 5.6 **Right of Entry and Inspection**. Grantor shall permit Beneficiary, and Beneficiary's agents, representatives and employees to make reasonable entries upon and inspection of the Land and Improvements, provided that Beneficiary shall give Grantor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Secured Property.

Section 5.7 **Hazardous Substances**.

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(a) Definition of "Hazardous Substance". "**Hazardous Substance**" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is (A) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), (B) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), or (C) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

(b) Representations and Warranties. Grantor represents and warrants to Beneficiary that: (i) to the best of Grantor's knowledge, following due inquiry, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Land; (ii) to the best of Grantor's knowledge, following due inquiry, no Hazardous Substance is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Premises, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iii) neither Grantor nor, to the best of Grantor's knowledge, following due inquiry, any other Person has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Premises, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iv) Grantor has not received any notice of, nor is Grantor aware of, any actual or alleged violation with respect to the Premises of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) neither Grantor nor, to the best of Grantor's knowledge, following due inquiry, the Premises is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Premises. Grantor further represents and warrants to Beneficiary that the foregoing representations and warranties contained in this Section are made after and are based upon inspection of the Premises by Grantor and due inquiry by Grantor as to the prior uses of the Premises.

(c) No Future Hazardous Substances. Grantor will not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Deed of Trust), nor shall Grantor cause or permit, as a result of any intentional or unintentional act or omission on the part of Grantor or any tenant, subtenant or other user or occupier of the Premises, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Premises or any other property or into any waters, except in compliance with all such laws.

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Notwithstanding anything to the contrary, however, Grantor shall not cause or permit the installation, operation or presence on the Land of any underground storage tank or system used or to be used for the storage, handling or dispensing of petroleum or any other substance regulated under the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), as now or hereafter amended, or any state or local statute, ordinance, rule, regulation or other law now or hereafter in effect regulating underground storage tanks or systems.

(d) Notification; Clean Up. Grantor will immediately notify Beneficiary if Grantor becomes aware of (i) any Hazardous Substance problem or liability with respect to the Premises, (ii) any actual or alleged violation with respect to the Premises of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Grantor will, at its sole expense, take or cause to be taken all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Premises, including, without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Beneficiary, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Premises if obligated to do so by contract or by law.

(e) Verification. For the purposes of inspecting the Premises to ascertain the accuracy of all representations and warranties in this Deed of Trust relating to Hazardous Substances, and the observance of all covenants contained in this Section, (i) Beneficiary is hereby authorized to enter and inspect the Premises, including the interior of any structures, at reasonable times and after reasonable notice; and (ii) if and at any time Hazardous Substances are being handled on the Premises, Grantor shall furnish Beneficiary with such information and documents as may be reasonably requested by Beneficiary to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws. Grantor shall reimburse Beneficiary upon demand for all costs and expenses, including without limitation reasonable attorneys' fees, incurred by Beneficiary in connection with any such entry and inspection and the obtaining of such information and documents.

(f) Indemnity for Certain Matters. Grantor shall be responsible for, and indemnify, defend, and hold harmless the Beneficiary from and against, any claim, judgment, loss, damage, demand, cost, expense or liability, known or unknown, contingent or otherwise, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or after the date of this Deed of Trust) of Hazardous Substances on, in, under or about the Premises including all costs and expenses incurred by the Beneficiary, including reasonable attorneys' and consultants' fees. The foregoing

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indemnification obligation shall be limited to the actual damages incurred by Beneficiary, including all advances or payments paid or agreed to be paid by Beneficiary pursuant to its rights to require environmental assessments, join or participate in any proceedings, cure the Grantor's default or enforce its remedies, (a) prior to and after any judicial foreclosure of this Deed of Trust or deed delivered and accepted in lieu thereof, or (b) prior to any nonjudicial foreclosure of this Deed of Trust or deed delivered and accepted in lieu thereof. The obligations of the Grantor under this Section shall be mutually exclusive of any liabilities arising after a nonjudicial foreclosure of this Deed of Trust or the delivery and acceptance of a deed in lieu of such nonjudicial foreclosure, which are evidenced by the Environmental Indemnity, and are not secured hereby.

Section 5.8 **Name and Location; Organizational Matters; Litigation; Other Consents and Agreements; ERISA; Existence**.

(a) Name and Location of Grantor. Grantor represents and warrants to Beneficiary that it is a **Limited Liability Company** organized under the laws of the State of **Washington**, whose principal place of business or its chief executive office (if it has more than one place of business) is located at the address set forth for Grantor in Section 7.21 (Notices). Grantor further represents and warrants to Beneficiary that the exact legal name for Grantor is as set forth in the opening paragraph of this Deed of Trust. Grantor covenants that it will give Beneficiary thirty (30) days' prior written notice of any act, event or occurrence which will cause the representations and/or warranties in this paragraph to become untrue in any respect.

(b) Good Standing. Grantor represents and warrants to Beneficiary that it is validly existing and in good standing under the laws of the State of **Washington** and in the State of Washington, and it has all necessary licenses, authorizations, registrations, permits and/or approvals to own its properties and to carry on its business as presently conducted.

(c) Authorization. Grantor represents and warrants to Beneficiary that the execution of this Deed of Trust, the other Loan Documents and the Environmental Indemnity have been duly authorized and there is no provision in the organizational documents of Grantor requiring further consent for such action by any other Person.

(d) No Litigation. Grantor represents and warrants to Beneficiary that neither Grantor nor, to Grantor's knowledge, any Person holding an equity interest in Grantor, is involved in any litigation, arbitration, or other proceeding or governmental investigation pending which if determined adversely would materially adversely affect Grantor's ability to perform in accordance with the Promissory Note, any other Loan Document, or the Environmental Indemnity. Grantor shall give prompt written notice to Lender of any such pending or threatened matter.

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(e) No Other Consents. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge, no consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Grantor of, or compliance by Grantor with, this Deed of Trust or any of the other Loan Documents or the Environmental Indemnity or the consummation of the transactions contemplated hereby or thereby, other than those which have been obtained by Grantor.

(f) No Plan Assets. Grantor represents and warrants to Beneficiary that (i) Grantor is acting on its own behalf and Grantor is not an employee benefit plan as defined in Section 3(3) of ERISA, which is subject to Title 1 of ERISA, nor a plan as defined in Section 4975(e)(1) of the Code (each of the foregoing hereinafter referred to collectively as a "**Plan**"); and (ii) Grantor's assets do not constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101, as modified by Section 3(42) of ERISA. Grantor shall not be reconstituted as a Plan or as an entity whose assets constitute "plan assets."

(g) Existence; Compliance with Governmental Requirements. Grantor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all present and future governmental requirements affecting or relating to Grantor, Grantor's business, and the Premises. Grantor shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose. Grantor shall furnish to Beneficiary, on request, reasonably satisfactory proof of compliance with any governmental requirement.

Section 5.9 **Preservation and Maintenance of Premises; Right of Entry**.

(a) Preservation and Maintenance. Grantor (i) will not commit, permit to occur or suffer any waste or impairment or deterioration of the Premises, (ii) will not abandon the Premises, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Premises to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Premises, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and will replace fixtures, equipment, machinery and appliances of the Premises when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Premises in a commercially reasonable manner for its intended use and occupancy.

(b) Alterations. No building or other improvement on the Land will be structurally altered, removed or demolished, in whole or in part, without Beneficiary's prior written consent, nor will any fixture or chattel covered by this Deed of Trust and

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adapted to the use and enjoyment of the Land be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Grantor, free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.

(c) Waiver of Right to Partition. Grantor irrevocably waives and covenants with Beneficiary not to pursue any partition of the Premises or any portion or proceeds thereof so long as any portion of the Secured Obligations remains outstanding.

Section 5.10 **Use of Premises**. Grantor will comply with, and will use commercially reasonable efforts to cause all tenants, invitees and other users of the Premises to comply with, all federal, state and municipal laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Premises, and pay all taxes, fees and charges in connection therewith. The Premises may not be converted to a cooperative or condominium without Beneficiary's prior written consent, which consent may be withheld in Beneficiary's sole and absolute discretion. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor will not allow changes in the use for which all or any part of the Premises was intended at the time this Deed of Trust was executed. Grantor will not initiate or acquiesce in a change in the zoning classification of the Premises without Beneficiary's prior written consent.

Section 5.11 **Use of Proceeds: Commercial Purpose**. Grantor shall use the proceeds of the Loan exclusively for commercial, business or investment purposes.

Section 5.12 **Other Covenants**. All of the covenants in the Promissory Note are incorporated herein by reference and, together with covenants in this Article 5, shall be covenants running with the land.

Section 5.13 **No Agricultural Use**. The Land is not used principally for agricultural or farming purposes.

Section 5.14 **Insurance Requirements**.

(a) Policies. Grantor shall keep all Improvements now or hereafter placed on the Land continuously insured against loss by fire or other hazards from time to time required by Beneficiary in such amounts as Beneficiary may require. All such policies (including renewals thereof), shall be: (a) issued by an insurance carrier acceptable to Beneficiary who is qualified and licensed to provide insurance in the State of Washington, (b) name Beneficiary as additional insured, lender loss payee, and/or mortgagee, as appropriate, (c) provide that the insurance carrier shall notify Beneficiary at least thirty (30) days before cancellation, termination or any material change of coverage, and (d) otherwise be in form and substance and contain such endorsements satisfactory to Beneficiary. Any amount collected under any such insurance policy may be applied upon the Secured Obligations in such order as

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Beneficiary shall determine. Such application by Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale. Grantor represents and warrants that it will provide proof of the insurance required to Beneficiary on not less than an annual basis.

(b) Assignments as Security. As security for the Secured Obligations, Grantor hereby assigns to Beneficiary all required insurance policies, together with all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation (all such assigned items constituting "Secured Property" for purposes of this Deed of Trust).

(c) Payment; Renewals. Grantor shall promptly furnish to Beneficiary all renewal notices relating to insurance policies. Grantor shall pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Grantor shall furnish to Beneficiary a renewal policy in a form acceptable to Beneficiary, together with evidence that the renewal premium has been paid.

Section 5.15 **Insurance Proceeds**.

(a) In the event of any loss resulting in a claim exceeding the lesser of (i) Grantor's commercially reasonable deductible amount and (ii) **Ten Thousand and No/100 Dollars ($10,000.00)**. Grantor will give prompt written notice thereof to the insurance carrier and Beneficiary.

(b) Except as may otherwise be required by applicable law, Beneficiary shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "**Net Proceeds**"), in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of indebtedness secured hereby, whether then due and payable or not. Any such application of proceeds to principal on the Promissory Note shall be without the imposition of any prepayment fee otherwise payable under the Promissory Note, but shall not extend or postpone the due dates of the installment payments under the Promissory Note or change the amounts thereof; or

(2) The reimbursement of Grantor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Premises. Beneficiary may, at its option, condition the reimbursement on Beneficiary's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen,

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and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may reasonably require.

(c) Notwithstanding the provisions of Section 5.15(b), Beneficiary agrees that the Net Proceeds from a loss described in this Section will be made available under Section 5.15(b)(2) above to reimburse Grantor for the cost of restoration or repair of the Premises, provided that each of the following conditions is satisfied:

(1) At the time the proceeds are received, and all times during the restoration or repair of the Premises, no event or circumstance exists which is or which with the passage of time, the giving of notice, or both will constitute an Event of Default;

(2) The Net Proceeds are less than the indebtedness then secured by this Deed of Trust;

(3) The Net Proceeds are received more than one (1) year prior to the maturity date of the Promissory Note, including any acceleration of the maturity date by Beneficiary if the Promissory Note gives Beneficiary a right of acceleration;

(4) Grantor gives Beneficiary written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Premises and requests that the Net Proceeds be made available therefor, and Grantor thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Beneficiary, which approval shall not be unreasonably withheld;

(5) The Net Proceeds are sufficient, in Beneficiary's judgment, to restore or repair the Premises substantially to its condition prior to the damage or destruction or, if in Beneficiary's reasonable business judgment they are not, Grantor deposits with Beneficiary funds in an amount equal to the deficiency, which funds Beneficiary may, at its option, require be expended prior to use of the Net Proceeds; and

(6) Beneficiary receives evidence satisfactory to Beneficiary that the Premises can lawfully be restored or repaired to its condition prior to the damage and destruction and that, upon completion of the restoration or repair, the Premises can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

(d) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to

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excuse Grantor from restoring, repairing or maintaining the Premises as provided in Section 5.9 (Preservation and Maintenance of Premises; Right of Entry), regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(e) If the Premises is sold pursuant to Section 5.17 (Restrictions on Transfer or Encumbrance of the Premises) or Article 6 (Remedies), or if Beneficiary otherwise acquires title to the Premises, Beneficiary shall have all of the right, title and interest of Grantor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Premises prior to such sale or acquisition.

Section 5.16 **Condemnation**.

(a) Proceedings. Grantor will promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Premises or part thereof or interest therein, and Grantor will appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Grantor grants Beneficiary a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to commence, appear in and prosecute, in Beneficiary's or Grantor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Beneficiary shall have no obligation to do so. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby absolutely and irrevocably assigned to Beneficiary (all such assigned items constituting "Premises" for purposes of this Deed of Trust); and Grantor hereby authorizes the payor to pay to Beneficiary, all proceeds of any such awards, payments, damages or claims shall be paid to Beneficiary.

(b) Application of Proceeds. Beneficiary shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 5.15(b) and Section 5.15(c) relating to the application of insurance proceeds.

Section 5.17 **Restrictions on Transfer or Encumbrance of the Premises**.

(a) A "**Transfer**" is, whether voluntary or involuntary, by operation of law or otherwise: (i) any sale, contract to sell, lien, encumbrance, conveyance or other transfer of the Premises or any part thereof or interest therein; (ii) any transfer or exercise of any right to drill for or to extract any water (other than for Grantor's own use), oil, gas or other hydrocarbon substances or any mineral of any kind on or under the surface of the Secured Property; (iii) any change (whether direct or indirect) in the ownership of any equity interest in Grantor; (iv) any change in the ownership of any such stock, membership, general partnership or other beneficial interest in any

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corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Grantor; (v) any change in the manager of any of the foregoing if such Person is a limited liability company; (vi) any pledge, assignment or encumbrance of any ownership or equity interest in Grantor, including assignments of ownership or equity interests made in connection with mezzanine or preferred equity financing; (vii) any abandonment of all or any part of the Premises; or (viii) the partition of, or the filing of any proceeding seeking the partition of, all or any part of the Premises.

(b) No Transfer is permitted without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole and absolute discretion. With respect to each and every Transfer for which Beneficiary has agreed to provide consent, Grantor shall give Beneficiary (1) prior written notice of the proposed Transfer, (2) copies of all transfer documentation, and (3) a $2,000.00 transfer review fee, which transfer fee shall be nonrefundable, fully earned by Beneficiary upon receipt, and not applied to the outstanding balance of the Loan. Notwithstanding the foregoing, no Transfer shall be permitted if the transferee or any affiliate of the transferee is a Person (a) that is listed in the Annex to, or is otherwise subject to the provisions of, EO 13224; (b) whose name appears on the OFAC most current list of "Specifically Designated National and Blocked Persons – (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (http://www.treasury.gov/ofac/downloads/t11sdn/pdf); (c) who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (d) who is otherwise affiliated with any Person listed above. Beneficiary's consent to any Transfer or its waiver of an Event of Default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Beneficiary by reason of any subsequent Transfer.

(c) For any Transfer permitted under this Section, Beneficiary may condition its consent upon, among other things, including: the Premises having been and assurances that it shall continue to be well maintained and managed in a manner satisfactory to Beneficiary in its sole and absolute discretion; Beneficiary's approval of the Transfer terms, documents and background materials; there being no uncured Event of Default under this Deed of Trust; for any Transfer involving an interest in the Premises, Grantor furnishing an endorsement to Beneficiary's title insurance policy insuring the continued validity and priority of the lien of this Deed of Trust following the Transfer and such subordination agreements and other documents as may be required by Beneficiary or its title company to issue the endorsement; and Grantor furnishing proof of payment of any taxes arising in connection with the Transfer. Unless Beneficiary in its sole and absolute discretion otherwise agrees in writing at that time, no Transfer shall release the transferor from any liability under the Loan Documents or the Environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity to the extent the transferor has personal liability. At

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Beneficiary's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Beneficiary. Regardless whether Beneficiary consents to a Transfer request, Grantor agrees to pay all of Beneficiary's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and attorneys' fees and costs, and Beneficiary may condition its willingness to consider a Transfer request upon a deposit to pay for Beneficiary's expenses.

(d) Upon breach of this Section, Beneficiary may declare all sums due under the Promissory Note and Deed of Trust immediately due and payable, unless prohibited by applicable law, and Beneficiary and Trustee may invoke any rights and remedies provided under Article 6 (Remedies).

Section 5.18 **Reimbursement of Beneficiary's Expenses**. Grantor agrees to pay all expenses of Beneficiary incurred in connection with the application for, processing of, drafting of, and making of the Loan, including, without limitation, title insurance premiums, escrow fees, search fees and related charges, survey costs, brokerage commissions, appraisal costs, inspections by professionals (for hazardous materials, asbestos, roof or building structural conditions, seismic analysis, etc.), recording charges, mortgage taxes, revenue stamps, Beneficiary's reasonable attorney's fees, and escrow, settlement and disbursement charges and expenses. Without limiting the foregoing, all amounts disbursed by Beneficiary pursuant to Section 5.2 (First Lien Status; Protection of Beneficiary's Security) or any other provision of this Deed of Trust or any other Loan Document, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Promissory Note from time to time, or at the maximum rate which may be collected from Grantor on such amounts by the payee thereof under applicable law if that is less.

Section 5.19 **Books and Records; Financial Statements**. Grantor will keep and maintain at Grantor's address stated in Section 7.21 (Notices), or such other place as Beneficiary may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Premises and copies of all written contracts, leases and other instruments which affect the Premises. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Beneficiary. Grantor will furnish to Beneficiary, within ten (10) days after Beneficiary's request therefor, the following documents, each certified to Beneficiary by Grantor as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Premises, (b) a rent roll for the Premises, showing the name of each tenant, and for each tenant, the unit occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Premises, (d) a copy of the most recent statements for the insurance coverages maintained under Section 5.14

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(Insurance Requirements) of this Deed of Trust, and (e) a statement of income and expenses of the Premises for the most recently ended fiscal year of Grantor. In addition, Grantor will furnish to Beneficiary, within ten (10) days after Beneficiary's request therefor, complete and current financial statements, in reasonable detail and certified as correct by Grantor. Grantor hereby irrevocably authorizes Beneficiary to obtain credit reports on Grantor on one or more occasions during the term of the Loan.

Section 5.20 **Reserves**.

(a) Deposits. If required by Beneficiary, Grantor will, at the time of making each installment payment under the Promissory Note, deposit with Beneficiary a sum, as estimated by Beneficiary, in its sole and absolute discretion, equal to (i) the rents under any ground lease, (ii) the taxes and special assessments next due on the Premises, and (iii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse at least thirty (30) days prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Beneficiary may require Grantor to deposit with Beneficiary, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Grantor or the Premises as Beneficiary deems necessary, in its sole and absolute discretion, to protect Beneficiary's interests (herein "**Other Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Beneficiary's option. If required by Beneficiary, Grantor will promptly deliver to Beneficiary all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Beneficiary under this paragraph (a) are hereby pledged as security for the Secured Obligations.

(b) Application of Deposits. All such deposited sums shall be held by Beneficiary and applied in such order as Beneficiary elects to pay such rents, taxes, assessments, premiums and Other Impositions or, upon the occurrence of an Event of Default, may be applied in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Section is solely for the added protection of Beneficiary and, except as may otherwise be required by applicable law, entails no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each transfer of the Premises shall automatically transfer to the transferee all rights of Grantor with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Beneficiary shall promptly refund to Grantor the remaining balance of any deposits then held by Beneficiary without interest.

(c) Adjustments to Deposits. If the total deposits held by Beneficiary exceed the amount deemed necessary by Beneficiary, in its sole and absolute discretion, to provide for the payment of such rents, taxes, assessments, premiums and

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Other Impositions as the same fall due, then such excess shall, provided no Event of Default then exists hereunder, be credited by Beneficiary on the next due installment or installments of such deposits. If at any time the total deposits held by Beneficiary is less than the amount deemed necessary by Beneficiary to provide for the payment thereof as the same fall due, then Grantor will deposit the deficiency with Beneficiary within thirty (30) days after written notice to Grantor stating the amount of the deficiency.

Section 5.21 **Prohibited Person Compliance**. For purposes of this paragraph, "**Debtor Entity**" means Grantor, any guarantor of the Loan, any indemnitor under the Environmental Indemnity, and their respective affiliates (including individuals and entities), members, partners, shareholders and other owners. Grantor warrants, represents and covenants that no Debtor Entity is or will be a Person (i) that is listed in the Annex to, or otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (http://www.treasury.gov/ofac); (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any Person listed above (any and all parties or Persons described in subparts (i)-(iv) above are herein referred to as a "**Prohibited Person**"). Grantor covenants and agrees that no Debtor Entity will (A) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (B) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Upon Beneficiary's request, Grantor further covenants and agrees to deliver to Beneficiary any certification or other evidence as may be requested by Beneficiary in its sole and absolute discretion, confirming that no Debtor Entity is a Prohibited Person or has taken any action described in subparts (A) and (B) above.

Section 5.22 **Flood Zone**. Grantor represents and warrants to Beneficiary that no portion of the Premises is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area. If determined at any time that any part of the Premises is located in an area identified on a Flood Hazard Boundary Map or Flood Insurance Rate Map issued by the Federal Emergency Management Agency as having special flood hazards and flood insurance has been made available, Grantor will also maintain a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with a generally acceptable insurance carrier, in an amount not less than the maximum amount of insurance which is available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as amended.

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Section 5.23 **Releases, Extensions, Modifications and Additional Security**. Without affecting the personal liability of any Person, including Grantor, for the payment of the Secured Obligations or the lien of this Deed of Trust on the remainder of the Secured Property for the unpaid amount of the Secured Obligations, Grantor hereby agrees that Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

(a) consent to the making of any plat or map of the Secured Property or any part of it;

(b) join in granting any easement or creating any restriction affecting the Secured Property;

(c) join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(d) reconvey the Secured Property or any part of it without any warranty.

Section 5.24 **Reconveyance**. When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Trustee shall reconvey the Secured Property, or so much of it as is then held under this Deed of Trust, without warranty to the Person or Persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of Persons claiming to be rightful grantees of any reconveyance.

Section 5.25 **Compensation and Reimbursement of Costs and Expenses**.

(a) Grantor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Grantor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services.

(b) Grantor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Secured Property or to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Article 6 (Remedies), whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of

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Trust, including attorneys' fees and other legal costs, costs of any sale of the Secured Property and any cost of evidence of title.

(c) Grantor shall pay all obligations arising under this Section immediately upon demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

Section 5.26 **Exculpation and Indemnification**.

(a) Beneficiary shall not be directly or indirectly liable to Grantor or any other Person as a consequence of any of the following:

(1) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to it in this Deed of Trust;

(2) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Secured Property or under this Deed of Trust;

(3) Beneficiary's failure to produce Rents from the Secured Property or to perform any of the obligations of the lessor under any lease covering the Secured Property;

(4) any waste committed by lessees of the Secured Property or any other parties, or any dangerous or defective condition of the Secured Property; or

(5) any loss sustained by Grantor or any third party resulting from any act or omission of Beneficiary in operating or managing the Secured Property upon exercise of the rights or remedies afforded Beneficiary under Article 6 (Remedies), unless the loss is caused by the willful misconduct and bad faith of Beneficiary, as determined by a court of competent jurisdiction on non-appealable order.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(b) Grantor agrees to indemnify Trustee, Beneficiary and MERS against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer

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or incur in performing any act required or permitted by this Deed of Trust or by law or because of any failure of Grantor to perform any of its obligations. This agreement by Grantor to indemnify Trustee, Beneficiary and MERS shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

Section 5.27 **Substitution of Trustee**. From time to time, Beneficiary or MERS may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the Secured Property is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

Section 5.28 **Additional Provisions Relating to Condominiums**. If the Secured Property is subject to a condominium declaration of conditions, covenants and restrictions recorded in the official records of the county in which the Secured Property is located (the "**Declaration**"), the following provisions shall apply.

(a) The provisions contained in this Deed of Trust are obligations of Grantor in addition to Grantor's obligations under the Declaration with respect to similar matters, and shall not restrict or limit Grantor's duties and obligations to keep and perform promptly all of its obligations as unit owner under the Declaration.

(b) Grantor shall at all times fully perform and comply with all the agreements, covenants, terms and conditions imposed upon unit owners under the Declaration, and if Grantor fails to do so, Beneficiary may (but shall not be obligated to) take any action Beneficiary deems necessary or desirable to prevent or cure any default thereunder. Beneficiary may also take such action as it deems necessary or desirable to cure a default under the Declaration by Grantor or any other party occupying the unit(s) (a "**Unit Occupant**") encumbered by this Deed of Trust, upon receipt by Beneficiary from the condominium association under the Declaration (the "**Association**") of written notice of such default, even though the existence of such default or the nature thereof may be questioned or denied by Grantor or by any party on behalf of Grantor. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary to prevent or cure any default by Grantor or a Unit Occupant, and Grantor hereby agrees to pay to Beneficiary, immediately and without demand, all such sums so paid and expended by Beneficiary, together with interest thereon from the date of each such payment at the Default Rate. 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. At Beneficiary's request, Grantor will submit satisfactory evidence of payment of all of its monetary obligations under

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the Declaration (including but not limited to rents, taxes, assessments, insurance premiums and operating expenses).

(c) At Beneficiary's request, Grantor will submit satisfactory evidence of payment of all of its monetary obligations under the Declaration (including but not limited to rents, taxes, assessments, insurance premiums and operating expenses).

(d) Grantor shall advise Beneficiary in writing of the giving of any notice to Grantor by the Association under the Declaration of any default by Grantor as unit owner or by a Unit Occupant thereunder in the performance or observance of any of the terms, conditions and covenants to be performed or observed by Grantor or such Unit Occupant thereunder, and Grantor shall deliver to Beneficiary a true copy of each such notice.

(e) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Association in connection with any case (including a case commenced or filed under the Bankruptcy Code), Beneficiary shall have the option, to the exclusion of Grantor, exercisable upon notice from Beneficiary to Grantor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith. Grantor shall, upon demand, pay to Beneficiary all costs and expenses (including attorneys' fees) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Grantor as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Declaration in any such case without the prior written consent of Beneficiary.

(f) Grantor will use its best efforts to obtain and deliver to Beneficiary within twenty (20) days after written request by Beneficiary, an estoppel certificate from the Association setting forth (i) the name of the unit owner, (ii) that the Declaration has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the amount of common expenses and other assessments payable by Grantor as unit owner under the Declaration, (iv) the date to which all common expenses and other assessments have been paid by Grantor as unit owner under the Declaration, (v) whether there are any alleged defaults by Grantor or a Unit Occupant under the Declaration and, if so, setting forth the nature thereof in reasonable detail, and (vi) as to such other matters as Beneficiary may reasonably request.

(g) Grantor represents and warrants to Beneficiary that as of the date hereof, no default under the Declaration has occurred and is continuing.

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(h) Grantor shall take such actions as may be reasonable to insure that the Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Beneficiary.

(i) Grantor shall not, except after notice to Beneficiary and with Beneficiary's prior written consent, either partition or subdivide the Secured Property or consent to:

(1) the abandonment or termination of the condominium(s) encumbered by this Deed of Trust, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(2) any amendment to any provision of the Declaration, the Association's bylaws or articles or any rules and regulations promulgated by the Association;

(3) termination of professional management and assumption of self-management of the Association; or

(4) any action which would have the effect of rendering the public liability insurance coverage maintained by the Association unacceptable to Beneficiary.

**ARTICLE 6 REMEDIES.**

Section 6.1 **Remedies**. At any time after the occurrence of an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

Section 6.2 **Acceleration**. Beneficiary may declare the Secured Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

Section 6.3 **Receiver**. Beneficiary and/or Trustee may apply to a court of competent jurisdiction for, and to the extent permitted by law, obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Secured Property for the repayment of the Secured Obligations, the appointment of a receiver of the Secured Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full

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power to rent, maintain and otherwise operate the Secured Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of the Promissory Note.

Section 6.4 **Entry on Secured Property**. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Secured Property, and in its own name or in the name of Grantor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, take exclusive possession of the Secured Property and of all books, records and accounts relating thereto, all in accordance with applicable laws. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Secured Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Grantor hereby irrevocably constitutes and appoints Beneficiary as its attorneyinfact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments. Grantor agrees to deliver to Beneficiary all books and records pertaining to the Secured Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section. If Grantor remains in possession of the Secured Property after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor in accordance with applicable law.

Section 6.5 **Election to Cure**. Either Beneficiary or Trustee may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Secured Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Deed of Trust; otherwise caring for and protecting any and all of the Secured Property; and/or employing counsel, accountants, contractors and other appropriate Persons to assist Beneficiary or

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Trustee. Beneficiary and Trustee may take any of the actions permitted hereunder either with or without giving notice to any Person.

Section 6.6 **Action to Foreclose**. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

Section 6.7 **Sale of Real Property**. Beneficiary may cause the Secured Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and/or sale as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the Secured Property, either as a whole or in separate parcels, and in such order as Trustee may determine, at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Grantor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, or such other form of payment satisfactory to Trustee. Any Person, including Grantor, Trustee or Beneficiary, may purchase at the trustee's sale to the extent permitted by then applicable law. Beneficiary shall have the benefit of any law permitting credit bids. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited in it.

Section 6.8 **UCC Sale**. Beneficiary may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee may sell the Personalty at a public sale to be held at the time and place specified in the notice of sale. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Beneficiary may choose to dispose of some or all of the Secured Property, in any combination consisting of both personal property and real property, in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Grantor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. With respect to any notices required or permitted under the Uniform Commercial Code, Grantor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable.

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Section 6.9 **Other**. Beneficiary and Trustee may exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on any Loan Document either before, during or after any proceeding to enforce this Deed of Trust), each in accordance with applicable law. To the fullest extent permitted under applicable law, Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the Uniform Commercial Code), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor, or against the Secured Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 6.10 **Application of Sale Proceeds and Rents**.

(a) Beneficiary and Trustee shall apply the proceeds of any sale of the Secured Property in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the Person or Persons entitled thereto.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Secured Property which Beneficiary may receive or collect under Article 6 (Remedies), in the following manner: first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the Person or Persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

Section 6.11 **Release of and Resort to Collateral**. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Secured Property, any part of the Secured Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Secured Property. For payment of the Secured Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

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Section 6.12 **Discontinuance of Proceedings**. If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary, to the extent permitted under applicable law, shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Secured Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default. Grantor hereby expressly waives, to the extent permitted under applicable law, any and all benefits Grantor may have to claim or assert that the Secured Obligations have been reinstated in accordance with its terms following the withdrawal of any foreclosure proceedings by Beneficiary, and acknowledges and agrees that reinstatement shall occur only upon written agreement of Beneficiary.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

Section 7.1 **Definitions**. Capitalized terms not otherwise defined herein shall have the meanings provided in the Promissory Note.

Section 7.2 **No Waiver or Cure**.

(a) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Grantor. Consent by Beneficiary or Trustee to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust:

(1) Beneficiary receives payment of any sum secured by this Deed of Trust after the due date thereof;

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(2) Beneficiary, its agent or a receiver takes possession of all or any part of the Secured Property;

(3) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Secured Property;

(4) Beneficiary receives and applies to any Secured Obligation proceeds of any Secured Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust;

(5) Beneficiary makes a site visit, observes the Secured Property and/or conducts tests thereon;

(6) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(7) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Deed of Trust or invokes any right or remedy provided under this Deed of Trust; or

(8) Any notice of default and election to sell under this Deed of Trust is cancelled.

Section 7.3 **Subrogation**. To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Secured Property, then Beneficiary shall be subrogated to all of the rights, liens and interests existing against the Secured Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

Section 7.4 **Promissory Note**. If any conflict or inconsistency exists between this Deed of Trust and the Promissory Note, the Promissory Note shall govern.

Section 7.5 **Powers of Beneficiary and Trustee**.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) Beneficiary may take any of the actions permitted under Section 6.3 (Receiver) or Section 6.4 (Entry on Secured Property), regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured

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Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

Section 7.6 **Covenants Running with the Land**. All obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Secured Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Secured Property (without in any way implying that Beneficiary has or will consent to any such conveyance or transfer of the Secured Property). All Persons who may have or acquire an interest in the Secured Property shall be deemed to have notice of, and be bound by, the terms of the Promissory Note and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 7.7 **Additional Documents; Power of Attorney**. Grantor, from time to time, will execute, acknowledge and deliver to Beneficiary upon request, and hereby grants Beneficiary a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Beneficiary, as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Grantor will pay to Beneficiary upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document. Grantor shall execute such further documents and do any and all such further things, including, but not limited to, correcting any errors or omissions in the Loan Documents, as may be necessary to implement and carry out the intent of this Deed of Trust.

Section 7.8 **Merger**. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Secured Property unless Beneficiary consents to a merger in writing..

Section 7.9 **Successors and Assigns; Joint and Several Liability; Agents**. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder. Each Person executing this Deed of Trust as Grantor shall be jointly and severally liable for all obligations of Grantor hereunder. In exercising any rights hereunder or taking actions provided for herein,

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Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary.

Section 7.10 **Indebtedness May Exceed Note's Face Amount**. Grantor's successors or assigns are hereby placed on notice that the Promissory Note contains late charge, prepayment and other provisions which may result in the outstanding principal balance exceeding the face amount of the Promissory Note.

Section 7.11 **Time of the Essence**. Time is of the essence in connection with all obligations of Grantor herein.

Section 7.12 **Governing Law**. This Deed of Trust shall be governed by the laws of the State of Washington (regardless of conflict of laws principles, the location of the Secured Property or the place of business, location or domicile of Grantor), except to the extent superseded by federal law. Any suit, if permitted, may be brought exclusively in the courts of the State of Washington located in the City of Seattle, King County, or of the United States for the Western District of Washington, and Grantor hereby waives any objection that it may now or hereafter have to the venue of any such proceeding or that such proceeding is brought in an inconvenient court. Grantor agrees that the laws or procedural rules of any jurisdiction except for Washington purporting to limit or affect Beneficiary's ability to enforce its rights as set forth in this Deed of Trust and any other documents referred to herein (including, without limitation, any fair value, security-first, security-only, or one-action provisions) are not applicable to the enforcement of Beneficiary's rights thereunder. Grantor intends and understands that Beneficiary will rely upon the agreements in the foregoing sentences in providing the credit accommodations constituting the Secured Obligations.

Section 7.13 **Waiver of Jury Trial**. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS DEED OF TRUST AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

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Section 7.14 **Interpretation**. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibit to this Deed of Trust are hereby incorporated in this Deed of Trust.

Section 7.15 **Headings**. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.16 **Counterparts**. This Deed of Trust may be executed in counterparts, all of which counterparts together shall constitute one and the same instrument (and original signature pages and notary pages from each counterpart may be assembled into one original document to be recorded).

Section 7.17 **Entire Agreement**. This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Grantor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.18 **InHouse Counsel Fees**. Whenever Grantor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated costs for services of inhouse counsel to the extent permitted by applicable law.

Section 7.19 **Waiver of Marshaling**. Grantor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Secured Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Grantor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

Section 7.20 **Severability**. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision

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relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

Section 7.21 Notices. Grantor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Grantor as debtor under the Uniform Commercial Code. Beneficiary's address given below is the address for Beneficiary as secured party under the Uniform Commercial Code. Grantor acknowledges that any notice Grantor provides to Lender must also be provided to MERS as Nominee for Lender until MERS' Nominee interest is terminated. Any notice provided by Grantor in connection with this Deed of Trust will not be deemed to have been given to MERS until actually received by MERS. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under applicable law, the applicable law requirement will satisfy the corresponding requirement under this Deed of Trust.

Addresses for Notices to Grantor:
**APC Construction LLC**
**16710 Smokey Point blvd Suite 401**
**Arlington, WA 98223**
Attention: **JEFFREY LATHAM**

Address for Notices to Beneficiary:
Certain Lending, Inc.
3250 Airport Way South, Suite 614
Seattle, Washington 98134
Attention: **Tony Ochoa**

*With a copy to:*
Certain Lending, Inc.
300 California Street, Suite 210
San Francisco, California 94104
Attention: **Tony Ochoa**
Email: servicing@certainlending.com

Address for Notices to MERS:
Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026
Flint, MI 48501-2026

Section 7.22 Sale of Promissory Note; Change of Loan Servicer. The Promissory Note or a partial interest in the Promissory Note (together with this Deed of Trust) can be sold one or more times without prior notice to Grantor. Lender acknowledges that until it directs MERS to assign MERS's Nominee interest in this Security Instrument, MERS remains the Nominee for Lender, with the authority to exercise the rights of Lender. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic

Payments due under the Promissory Note and this Security Instrument and performs other mortgage loan servicing obligations under the Promissory Note, this Security Instrument, and applicable law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Promissory Note. To the extent required by applicable law, if there is a change of the Loan Servicer, Grantor will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Promissory Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Promissory Note, the mortgage loan servicing obligations to Grantor will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Promissory Note purchaser unless otherwise provided by the Promissory Note purchaser.

*(Signature page(s) follow)*



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IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of January 16, 2020.

**GRANTOR:**

**APC Construction LLC, a Washington Limited Liability Company**

By: _____
Name: JEFFREY LATHAM
Title: Authorized Agent

STATE OF WASHINGTON )
) ss.
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that **JEFFREY LATHAM** is the person who appeared before me, and said person acknowledged that such person signed this instrument, on oath stated that such person was authorized to execute the instrument and acknowledge it as the **Authorized Agent** of **APC Construction LLC, a Washington Limited Liability Company** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JANUARY 16, 2020 Martha R. Vanderpool

Name Printed: Martha R. Vanderpool
Notary Public in and for the State of Washington, residing at Arlington, WA
My appointment expires 6-17-2023

NOTARY PUBLIC
STATE OF WASHINGTON
MARTHA R. VANDERPOOL
License Number 24091
My Commission Expires 06-17-2023

NOTARY PUBLIC
STATE OF WASHINGTON
MARTHA R. VANDERPOOL
License Number 24091
My Commission Expires 06-17-2023

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EXHIBIT A
Legal Description

**LOT 10 AND THE EAST QUARTER OF LOT 9, BLOCK 45, FIRST ADDITION TO THE TOWN OF SEDRO IN SKAGIT COUNTY, WASHINGTON, AS PER PLAT RECORDED IN VOLUME 3 OF PLATS, PAGE 29, RECORDS OF SKAGIT COUNTY.**

**SITUATE IN THE COUNTY OF SKAGIT STATE OF WASHINGTON.**