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Skagit County Auditor

Document Title:

Deed of Trust and Security Agreement

Reference Number :

Grantor(s):

☐ additional grantor names on page ____

1. Stephen Jay Chaney and Sheryl Lenox Chaney Revocable Living Trust

2.

Grantee(s):

☐ additional grantee names on page ____

1. 4318 Navigator Lane, LLC

2. Trustee: Erin M. Karp,. Esq.

Abbreviated legal description:

☐ full legal on page(s) ____

Lot 7, City of Anacortes Short Plat No. SP-05-006, recorded September 21, 2101, under Auditor's File No. 201009210052, being a portion of Section 22, Township 35 North, Range 1 East, W.M., records of Skagit County, Washington

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____

P130304

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 1st day of July, 2020, by the Stephen Jay Chaney and Sheryl Lenox Chaney Revocable Living Trust ("**Borrower**"), as grantor, having an address at 6130 152nd Place SE, Snohomish, Washington 98296 in favor of **4318 Navigator Lane, LLC**, a Washington limited liability company, having an office at 3500 188th St. SW, Suite 445, Lynnwood, Washington 98037 (together with its successors and assigns, "**Lender**").

RECITALS:

Borrower by that certain Promissory Note given to Lender dated as of the date hereof (together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to herein as the "**Note**") is indebted to Lender in the aggregate principal sum of \$2,500,000.00 (the "**Loan**") to the extent advanced by Lender in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of the Other Obligations (as defined in Article 2).

Article 1. GRANTS OF SECURITY

Section 1.1. **PROPERTY GRANTED.** For the purpose of securing payment and performance of the Obligations (as defined in Article 2), Borrower, for and in consideration of good and valuable consideration, the receipt of which hereby is acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, deeded, sold, bargained, transferred, assigned, set-over and conveyed and by these presents does grant, deed, bargain, sell, transfer, assign, set-over and convey unto Lender, forever, in trust, with power of sale, and grant a security interest in (each for the benefit of Lender and its successors and assigns) all of Borrower's right, title and interest in and to the following property, rights, interests and estates to the extent now owned, or hereafter acquired by Borrower (collectively, the "**Property**");

(a) **Land.** The real property described in Exhibit A attached hereto (the "**Land**");

(b) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(c) **Easements.** All easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(d) **Fixtures and Personal Property.** All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code,

as adopted and enacted by, as applicable, the state where any of the Property is located or the state of formation of Borrower (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(e) **Leases and Rents.** All leases and other agreements (including, without limitation, the Master Lease (defined below)) affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including, without limitation, any guaranty of any of the foregoing leases (a "**Lease**" or "**Leases**"), and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents (including, without limitation, the Master Lease Rents (defined below)), additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "**Rents**"), subject to the License (as defined in the ALR (defined below)), and all proceeds from the sale or other disposition of the Leases;

(f) **Condemnation Awards.** All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(g) **Insurance Proceeds.** All proceeds of and any unearned premiums on any insurance policies covering the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property, subject to the provisions hereof;

(h) **Tax Certiorari.** All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(i) **Conversion.** All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(j) **Agreements.** All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(k) **Intangibles.** All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(l) **Letter of Credit Rights.** All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Section 1.1;

(m) **Tort Claims.** All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(n) **Borrower Accounts.** All payments for goods or property sold or leased or for services rendered arising from the operation of the Land and the Improvements, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper;

(o) Reserve Accounts. All reserves, escrows and deposit accounts required under the Loan Documents (defined below) and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof (collectively, the "**Reserve Accounts**");

(p) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (o); and

(q) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (r) above.

Section 1.2. ASSIGNMENT OF RENTS. Reference is hereby made to that certain Assignment of Leases and Rents dated as of the date hereof and delivered by Borrower to Lender in connection with the Loan (as the same may hereafter be amended, restated, replaced and/or otherwise modified, the "**ALR**"). The terms and conditions of the ALR are hereby incorporated by reference as if fully set forth herein.

Section 1.3. SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property, which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the applicable provisions of the Uniform Commercial Code. Borrower is the record owner of the Land.

Section 1.4. PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies belonging to Borrower which are now or hereafter held by Lender, and which are (i) Net Proceeds (as defined in Section 4.2) and/or (ii) condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Lender, to its successor in the trust created by this Security Instrument, and to its or their respective assigns forever, in trust, however, upon the terms and conditions set forth herein;

IN TRUST, WITH THE POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument;

PROVIDED, HOWEVER, upon written request of Lender stating that all sums secured hereby have been paid in full in accordance with the terms hereof, and upon the surrendering of this Security Instrument and the Note to Lender for cancellation and retention Lender shall reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the estate hereby granted and then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

Article 2. PAYMENTS

Section 2.1. DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "**Debt**"): (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the other Loan Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the other Loan Documents; (d) the payment of all sums

advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and (e) the payment of all sums reasonably advanced and costs and expenses reasonably incurred (including unpaid or unreimbursed servicing and special servicing fees) by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note, or the other Loan Documents (collectively, the "Other Obligations"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations." As used herein, the term "Loan Documents" shall mean, collectively, this this Security Instrument, the Note, the Environmental Indemnity (defined below), the Indemnity Agreement (defined below), the Reserve Agreement (defined below) and all other documents executed and/or delivered in connection with the Loan, as each of the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time. The foregoing provisions shall not be deemed to grant Lender the right to apply any payments by Borrower under the Loan Documents, any Rents or other proceeds of the Property, in each case, to any portion of the Debt prior to the date that such portion of the Debt is due and payable pursuant to the terms and conditions hereof and/or of the other Loan Documents. As used herein, the term "Reserve Agreement" shall mean that certain Reserve and Security Agreement, dated as of the date hereof, by and between Borrower and Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time.

Section 2.2. **PAYMENTS.** Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall not cure any then-existing Event of Default (defined below).

Article 3. BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1. **PAYMENT OF DEBT.** Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2. **INCORPORATION BY REFERENCE.** All the covenants, conditions and agreements contained in (a) the Note and (b) the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. **INSURANCE.**

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain, or cause to be maintained, during the entire term of this Security Instrument, policies of insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the

outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) for all such insurance coverage and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the Full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to (A) the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance 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 each may be amended or such lesser amount as Lender shall require plus (B) excess flood insurance in an amount equal to the building value of the first floor of the Improvements plus three (3) months worth of the coverage set forth in subsection (ii) hereof; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance required to be maintained pursuant to clauses (y) and (z) above shall be on terms consistent with the Special Form policy required pursuant to this subsection (i). Notwithstanding anything to the contrary in this Security Instrument, the insurance coverage described in the foregoing subparagraphs (y) and (z) shall be required (1) as of the date hereof only if determined to be necessary by Lender based upon its reasonable evaluation of third party reports and (2) at any time hereafter in the event subsequent third party reports indicate a change in the condition of or circumstances surrounding the Property;

(ii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form referenced in subsection (i), above, does not otherwise apply, (A) owner's contingent or protective liability insurance, otherwise known as Owner Contractor's Protective Liability, covering claims not covered by or under the terms or provisions of the commercial general liability insurance policy in (v) below; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until reasonably required to be changed by Lender as provided in subsection 3.3(b) below; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability and (5) contractual liability covering the indemnities contained in Section 13.1 to the extent the same is available;

(b) All insurance provided for in Section 3.3(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or in the singular, the "Policy"), and (i) shall be issued by financially sound and responsible insurance companies reasonably approved by Lender, and authorized or licensed to do business in the state where the Property is located, with (A) general policy ratings of A or better and financial classes of X or better by A.M. Best Company, Inc. and (B) either (i) such insurance companies having claims paying ability/financial strength ratings of "A" (or its equivalent) or better.

(c) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of Restoration (defined below) of the Property and otherwise comply with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration (including, without limitation, any applicable deductibles under the Policies) whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) provided no

Event of Default shall be continuing, Borrower may adjust losses aggregating not in excess of the Threshold Amount (defined below) if such adjustment is carried out in a competent and timely manner and (B) if no Event of Default shall be continuing, Lender shall not settle or adjust any such claim under clause (1), above, without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand. As used herein, the term "Restoration" shall mean, following the occurrence of a casualty or a condemnation to the Property which is of a type necessitating the repair of the Property (or any portion thereof), the completion of the repair and restoration of the Property (or applicable portion thereof) as nearly as possible to the condition the Property (or applicable portion thereof) was in immediately prior to such casualty or condemnation, with such alterations as may be reasonably approved by Lender.

Section 3.4. PAYMENT OF TAXES, ETC. (a) Subject to the provisions of Sections 3.4(b) and 3.5 hereof, Borrower shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, assessments, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver to Lender, promptly upon Lender's written request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge against the Property arising out of such Taxes, Other Charges and utility service charges. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender, promptly upon Lender's written request, paid receipts for the payment of the Taxes and Other Charges.

(b) Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default is continuing under the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) (A) such proceeding or other actions taken by Borrower in connection with such proceeding shall suspend the collection of the Taxes from Borrower and from the Property, (B) Borrower shall have paid all of the Taxes under protest or (C) to the extent expressly permitted by applicable law as a method of releasing any related lien for the applicable contested Taxes, Borrower shall have deposited with the applicable taxing authority Qualified Security (defined below) in an amount sufficient to insure the payment of such contested Taxes, together with all interest and penalties thereon, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) to the extent not already secured pursuant to any Qualified Security deposited by Borrower with the applicable taxing authority, Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) to the extent not already secured pursuant to any Qualified Security deposited by Borrower with the applicable taxing authority, Borrower shall have furnished the security as may be required in the proceeding to insure the payment of any contested Taxes, together with all interest and penalties thereon. In connection with the foregoing, provided no Event of Default has occurred and is then continuing and subject to the other applicable terms and conditions of Section 3.5, Lender shall allow Borrower to access then available monies in the Escrow Fund (if any) to pay such Taxes under protest. As used herein, "Qualified Security" shall mean, with respect to any contested Taxes, cash or cash equivalents acceptable to the applicable taxing authority which such cash or cash equivalents may be applied by the applicable taxing

authority to the payment of such contested Taxes (and any interest and penalties thereon) if Borrower is unsuccessful in the applicable contest.

Section 3.5. **CONDEMNATION.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Land and/or the Improvements and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney in fact coupled with an interest, with exclusive powers to collect, receive and apply to the Debt (or provide to Borrower to pay for Restoration) any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and, at any time during which an Event of Default is continuing, to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property in accordance with Section 4.4 hereof. Notwithstanding any taking by any public or quasi public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender (as and to the extent provided in Section 4.4), after the deduction of expenses of collection, to the reduction or discharge of the Debt as and to the extent provided in Section 4.4. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the unpaid portion of the Debt. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 4.4. Borrower shall pay all costs of Restoration whether or not such costs are covered by the Net Proceeds.

Notwithstanding anything contained in this Section 3.5 or this Security Instrument to the contrary (but subject to the provisions of Section 4.4 below (including Section 4.4(c)) and the last paragraph of this Section 3.6), Lender may elect to (y) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Debt in such order and manner as Lender may elect, whether due or not (provided, however, Lender shall apply such proceeds to amounts then due prior to applying same to amounts not yet due), or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Security Instrument restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election.

Notwithstanding the foregoing or anything to the contrary contained herein or in any other Loan Documents, in the event that, in accordance with the applicable terms and conditions hereof, the Condemnation Net Proceeds are required to be applied to the Debt and the amount of the Condemnation Net Proceeds applied to the Debt in connection therewith are insufficient under REMIC Requirements, Borrower shall, within five (5) days of demand by Lender, prepay the principal amount of the Debt in an amount equal to such insufficiency plus the amount of any then applicable Interest Shortfall (as defined in the Note) (such payment, the "Condemnation Payment"). Provided no Event of Default exists, any such prepayment shall not be subject to any prepayment premium or penalty (other than any applicable Interest Shortfall).

Section 3.7. **MAINTENANCE OF PROPERTY.** Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender (which such consent shall not be unreasonably withheld, conditioned or delayed (subject, in each case, to applicable REMIC Requirements)). Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be

affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not, without the prior written consent of Lender, initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

Section 3.8. **WASTE.** Borrower shall not commit or suffer any physical waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.9. **COMPLIANCE WITH LAWS.** Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect Borrower, the Property or the use of the Property, including, without limitation, the Prescribed Laws (defined below) ("**Applicable Laws**") (which such covenant shall be deemed to (i) include Environmental Laws (as defined in the Environmental Indemnity) and (ii) require Borrower to keep all Permits (defined below) in full force and effect). Borrower shall from time to time, upon Lender's request, based on Lender's belief, in the exercise of Lender's reasonable judgment, that the Property or Borrower is in violation of any Applicable Law, provide Lender with evidence satisfactory to Lender that the Property or Borrower (as applicable) complies with the Applicable Laws which Lender believes the Property or Borrower (as applicable) is in violation of or is exempt from compliance with such Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws. As used herein, the term "**Prescribed Laws**" shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Applicable Laws relating to money laundering or terrorism. As used herein, the term "**Permits**" shall mean all necessary certificates, licenses, permits, franchises, certificates of occupancy, consents, and other approvals (governmental and otherwise) required under Applicable Laws for the operation of the Property and the conduct of Borrower's business (including, without limitation, all required zoning, building code, land use, environmental and other similar permits or approvals).

Section 3.10. **BOOKS AND RECORDS.** (a) Borrower shall keep adequate books and records of account in accordance with GAAP (defined below) or such other comprehensive basis of accounting as may be acceptable to Lender in its reasonable discretion, in each case consistently applied (each or any of the foregoing, the "**Approved Accounting Method**") and furnish copies of the same to Lender upon request.

Section 3.11. **PAYMENT FOR LABOR AND MATERIALS.** Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist (subject to Borrower's right to contest any such matter as described below) beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof. Nothing contained herein shall, however, affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that

any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) at least 30 days prior to the date such lien could otherwise be foreclosed upon pursuant to Applicable Law.

Section 3.12. **PERFORMANCE OF OTHER AGREEMENTS.** Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.13. **PROPERTY DOCUMENT COVENANTS.** Borrower agrees that without the prior consent of Lender, Borrower will not enter into any new Property Document or execute modifications to any existing Property Document if such new Property Document or such modifications will have a Material Adverse Effect. Borrower shall enforce, shall comply with, and shall use commercially reasonable efforts to cause each of the parties to each Property Document to comply with all of the terms and conditions contained in such Property Document.

Article 4. SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1. **PROPERTY USE.** The Property shall be used only for residential and appurtenant and related uses typical of a property such as the Property allowed by the Property's zoning classification and all agreements pertaining to the Property and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's reasonable discretion.

Section 4.2. **RESTORATION AFTER CASUALTY/CONDEMNATION.** In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

(a) Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.2(a); provided, that, with the exception of Section 4.2(b)(i), the following subsections of this Section 4.2(b) shall not be deemed to apply to any Net Proceeds to be disbursed pursuant to Section 4.2(a) above. The term "Net Proceeds" for purposes of this Section 4.2 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Subsection 3.3 of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same, whichever the case may be (the "Condemnation Net Proceeds").

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met: (A) no Event of Default is then continuing under the Note, this Security Instrument or any of the other Loan Documents or an event which after the passage of time would constitute an Event of Default; (B) Borrower shall deliver or cause to be delivered to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire estimated cost of completing the Restoration, reasonably satisfactory to Lender; (C) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of the Restoration; (D) Borrower shall commence the Restoration as soon as reasonably practicable and shall diligently pursue the same to satisfactory completion; (E) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date (as defined in the Note), (2) one (1) year after the occurrence of such fire or other casualty or taking, whichever the case may be, or (3) such time as may be required under (I) the Property Documents and (II) applicable zoning laws, ordinances, rules or regulations in order to repair and restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable; (F) the Property and the use thereof after the Restoration will be in compliance with and permitted under (I) the Property Documents and (II) all applicable zoning laws, ordinances, rules and regulations; (J) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with (I) the Property Documents and (II) all applicable

governmental laws, rules and regulations (including, without limitation, all applicable Environmental Laws (as defined in the Environmental Indemnity)); (F) such fire or other casualty or taking, as applicable, does not result in a loss of access to the Property or the Improvements which will exist following Restoration.

Article 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. **WARRANTY OF TITLE.** Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, and that Borrower possesses an unencumbered fee simple absolute in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (other than standard printed exceptions) shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever. Borrower hereby represents and warrants that none of the Permitted Exceptions will materially and adversely affect the ability of the Borrower to pay in full the Loan, the use of the Property for the use currently being made thereof, the operation of the Property or the value thereof.

Section 5.2. **AUTHORITY.** Borrower has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3. **LEGAL STATUS AND AUTHORITY.** Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to operate and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the other Loan Documents. Borrower's exact legal name is correctly set forth on the first page of this Security Instrument.

Section 5.4. **VALIDITY OF DOCUMENTS.** The execution, delivery and performance of the Note, this Security Instrument and the other Loan Documents and the borrowing evidenced by the Note (i) are within the corporate/partnership/limited liability company (as the case may be) power of Borrower; (ii) have been authorized by all requisite corporate/partnership/limited liability company (as the case may be) action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, bylaws, partnership, trust or operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby).

Section 5.5. **LITIGATION.** There is no action, suit or proceeding (including any condemnation or similar proceeding), or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or

any of the other Loan Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the other Loan Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6. STATUS OF PROPERTY. (a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof, if required under the terms of that Section.

(b) Borrower has obtained and provided copies to Lender of all Permits. The Permits foregoing are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws. Borrower and the Property each comply in all material respects with Prescribed Laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7. NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8. SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9. FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditors.

Section 5.10. BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.11. TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.12. **MAILING ADDRESSES.** Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.13. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** All information submitted to Lender by Borrower (or any of its agents, employees, representatives or affiliates) in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) were accurate, complete and correct in all respects when delivered. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.14. **DISCLOSURE.** To the best of Borrower's Knowledge, Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.15. **LETTER-OF-CREDIT RIGHTS.** If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Security Instrument now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing in each case that upon an Event of Default, the proceeds of any drawing under the letter of credit are to be applied as provided in Section 11.2 of this Security Agreement.

Section 5.16. **AUTHORIZATION TO FILE FINANCING STATEMENTS. POWER OF ATTORNEY.** Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by Applicable Law, as applicable to all or part of the fixtures owned by Borrower or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section, to the extent that Borrower authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 5.17. **EMBARGOED PERSONS.** To the best of Borrower's Knowledge, as of the date hereof and at all times throughout the term of the Loan, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Sponsor or Guarantor constitute (or will constitute) property of, or are (or will be) beneficially owned, directly or indirectly, by any Person or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan made by Lender is in violation of Applicable Law ("Embargoed Person"); (b) no Embargoed Person has (or will have) any interest of any nature whatsoever in Borrower, Sponsor or Guarantor, as applicable, with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law; and (c) none of the funds of Borrower, Sponsor or Guarantor, as applicable, have been (or will be) derived from any unlawful activity with the result that the investment in Borrower, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law.

Section 5.18. **PATRIOT ACT.** All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including Executive Order 13224 effective September 24, 2001 (collectively referred to in this Section only as the "Patriot Act") and are incorporated into this Section. Borrower hereby represents and warrants that Borrower, Sponsor and Guarantor and each and every Person affiliated with Borrower, Sponsor and/or Guarantor or that to Borrower's knowledge has an economic interest in Borrower, or, to Borrower's knowledge, that has or will have an interest in the transaction contemplated by this Security Instrument or in the Property or will participate, in any manner whatsoever, in the Loan, is: (i) not a "blocked" Person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224 and all modifications thereto or thereof (as used in this Section only, the "Annex"); (ii) in full compliance with the requirements of the Patriot Act and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (as used in this Section only, "OFAC"); (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Act and available to Lender for Lender's review and inspection during normal business hours and upon reasonable prior notice; (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (v) not listed as a Specially Designated Terrorist or as a "blocked" Person on any lists maintained by the OFAC pursuant to the Patriot Act or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Act or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Act; (vi) not a Person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any Person named in the Annex or any other list promulgated under the Patriot Act or any other Person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower, Sponsor or Guarantor (or any of their respective beneficial owners, affiliates or participants) become listed on the Annex or any other list promulgated under the Patriot Act or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. It shall be an Event of Default hereunder if Borrower, Guarantor, Sponsor or any other party to any Loan Document becomes listed on any list promulgated under the Patriot Act or is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Section 5.19. **BROKER.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Security Instrument.

Section 5.20. **PROPERTY DOCUMENT REPRESENTATIONS.** Each Property Document is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to any Property Document, is in default thereunder, and to the best of Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No Property Document has been modified, amended or supplemented (except, in each case, as expressly set forth herein).

Article 6. OBLIGATIONS AND RELIANCES

Section 6.1. **NO RELIANCE ON LENDER.** The general partners, shareholders, members, principals or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.2. **NO LENDER OBLIGATIONS.** (a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), or Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations

with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 6.3. **RELIANCE.** Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the other Loan Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the other Loan Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

Article 7. FURTHER ASSURANCES

Section 7.1. **RECORDING OF SECURITY INSTRUMENT, ETC.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all reasonable expenses (the "**Expenses**") incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law to do so.

Section 7.2. **FURTHER ACTS, ETC.** Except as expressly provided to the contrary in Article 19 or elsewhere herein, Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3. CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either

directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

(d) Any prepayment of the Debt made by Borrower under this Section 7.3 shall not require the payment of any Yield Maintenance Premium (as defined in the Note) or other prepayment premium or penalty (other than the payment of any applicable Interest Shortfall).

Section 7.4. **ESTOPPEL CERTIFICATES.** (a) After request by Lender, Borrower, within ten (10) Business Days, shall furnish Lender or any proposed assignee or Investor (as defined in Section 19.1) with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Loan, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, to Borrower's Knowledge, there exist no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations (except as may be limited by (A) bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and (B) general principles of equity) and have not been modified or if modified, giving particulars of such modification, (viii) whether, to Borrower's Knowledge, any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect, (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to Borrower's Knowledge, any of the lessees under the Leases are in default under the Leases, and, if any of the aforesaid lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other factual matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Lender, by its acceptance of this Security Instrument, agrees to deliver to Borrower (at no cost to Borrower) promptly upon Borrower's request therefor (provided such request is not made more than twice in any calendar year) a written statement setting forth the unpaid principal amount of the Note, the accrued and unpaid interest thereon, the date on which an installment of interest and/or principal were last paid thereunder and whether there are any Events of Default which currently exist and are actually known to Lender.

(c) Borrower shall use its commercially reasonable best efforts to deliver to Lender, promptly upon request (provided such request is not made more than once in any calendar year other than any request by Lender made in connection with the securitization of the Loan or during the continuance of an Event of Default), duly executed estoppel certificates from any one or more parties to the Property Documents as reasonably required by Lender attesting to such facts regarding the Property Documents as Lender may reasonably require.

Section 7.5. **FLOOD INSURANCE.** After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area."

or, if any of the Improvements are located within any such area Borrower will obtain and maintain the insurance required prescribed in Section 3.3 hereof, if required under the terms of that section.

Section 7.6. **SPLITTING OF SECURITY INSTRUMENT**. This Security Instrument and the Note shall, at any time during the continuance of an Event of Default, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender. Borrower's obligations hereunder are conditioned upon Lender's agreement, as evidenced by its acceptance hereof, that such splitting or division shall not result in any decrease of any rights of Borrower or any Indemnitor (as defined in the Indemnity Agreement (defined below)) hereunder or under any other Loan Document or any additional cost or potential liability to Borrower or any Indemnitor that exceeds that which exists hereunder prior to such splitting or division.

Section 7.7. **REPLACEMENT DOCUMENTS**. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than the Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to the Note, (a) Borrower will execute a reaffirmation of the portion of the Debt as evidenced by the Note acknowledging that Lender has informed Borrower that the Note was lost, stolen destroyed or mutilated and that such portion of the Debt continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation or (b) if requested by Lender, Borrower will execute a replacement note, provided, that Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Article 8. DUE ON SALE/ENCUMBRANCE

Section 8.1. **LENDER RELIANCE**. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and Sponsor in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2. NO SALE/ENCUMBRANCE

(a) Except as provided in this Security Instrument, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "Prohibited Transfer"), without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder; (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to (A) any Leases or any Rents or (B) the Property Documents; (iv) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (v) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by any Borrower, as a tenant-in-common, or by any other Person, pursuant to any contractual agreement or other

instrument or under Applicable Law (including, without limitation, common law) and/or any other action instituted by (or at the behest of) Borrower or its affiliates or consented to or acquiesced in by Borrower or its affiliates which results in a Property Document Event; (vi) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (vii) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (viii) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; (ix) the removal or the resignation of Manager and/or Parking Manager (including, without limitation, an Affiliated Manager) other than in accordance with the applicable terms and conditions hereof; or (x) any conversion (statutory or otherwise) of any Restricted Party.

Article 9. PREPAYMENT

Section 9.1. **PREPAYMENT.** The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note and this Security Instrument including the payment (if applicable) of any prepayment consideration or premium due under the Note (whether due prior to or after the occurrence of an Event of Default).

Article 10. DEFAULT

Section 10.1. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) (i) any Payment (as defined in the Note) is not paid within five (5) days of the date when due, (ii) any other portion of the Debt is not paid within five (5) days of the date when due or (iii) the entire Debt is not paid on or before the Maturity Date;

(b) if any of the Taxes or Other Charges are not paid within ten (10) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender within ten (10) days of Lender's written request;

(d) if the Property is subject to actual, physical waste;

(e) if any representation or warranty of Borrower or any Person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (including, without limitation, Guarantor) or any general partner, managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(f) if Borrower shall be in default under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument;

(g) subject to Borrower's contest rights contained in Section 3.12 hereof, if the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable) and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of ninety (90) days;

(h) if any federal tax lien or final judgment is filed against Borrower, Guarantor, any general partner or managing member of Borrower or Guarantor, or the Property and same is not discharged of record within ninety (90) days after same is filed;

(i) if Borrower fails to cure any violations of Applicable Laws within ninety (90) days, of first having received notice thereof;

(j) if Borrower shall fail to reimburse Lender within ten (10) days of written demand, with interest calculated at the Default Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument (other than amounts paid by Lender from the Escrow Fund prior to the continuance of an Event of Default);

(k) if Borrower shall fail to timely deliver to Lender an estoppel certificate pursuant to the terms of Subsections 7.4(a) and does not cure such failure within ten (10) days of written notice;

(l) if Borrower shall fail to timely deliver to Lender, after request by Lender, the statements referred to in Section 3.11 in accordance with the terms thereof and does not cure such failure within ten (10) days of written notice;

(m) if (i) Borrower defaults under the Property Documents beyond the expiration of applicable notice and grace periods, if any, thereunder, (ii) any of the Property Documents are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or if Borrower consents to a transfer of any party's interest thereunder without Lender's prior written consent, (iii) any Property Document is canceled, terminated, surrendered or expires pursuant to its terms, unless in such case Borrower enters into a replacement thereof in accordance with the applicable terms and provisions hereof or (iv) a Property Document Event occurs (provided, however, with respect to the events described in subsections (i) through (iv) above, any such events shall not constitute an Event of Default hereunder to the extent that (A) the same is curable by Borrower and (B) Borrower cures the same within the earlier of (I) the timeframe required prior to the period in which any such event would no longer be curable or (II) thirty (30) days after Borrower's receipt of notice thereof) (the foregoing, a "Property Document EOD");

(n) if Borrower attempts to assign its rights under this Security Instrument or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(o) if, without Lender's prior written consent, Borrower forgives or cancels any material debt owed to it;

(p) if Borrower shall commit any criminal act which results in the seizure, forfeiture or loss of the Property;

(q) If Borrower misappropriates, converts or misapplies any (A) insurance proceeds, (B) condemnation awards, (C) Rents during the continuance of an Event of Default or (D) funds disbursed by Lender from any of the Reserve Accounts;

(r) With respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(s) if an uninsured material loss, theft, damage or destruction to Property occurs and Borrower does not, within thirty (30) days of the occurrence thereof, provide evidence reasonably acceptable to Lender that Borrower has the funds necessary to consummate the applicable Restoration;

(t) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents

in the case of any default which can be cured by the payment of a sum of money or for sixty (60) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such sixty (60) day period and Borrower shall have commenced to cure such default within such sixty (60) day period and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

(u) a default beyond applicable notice or cure periods (if any) shall occur under any other Loan Documents.

Section 10.3. DEFAULT INTEREST. Borrower will pay, from the date of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) four percent (4%) plus the Applicable Interest Rate (as defined in the Note), and (b) the maximum interest rate which Borrower may by law pay or Lender may charge and collect (the "Default Rate").

Article 11. RIGHTS AND REMEDIES

Section 11.1. REMEDIES. Except as expressly limited hereby or by the other Loan Documents, during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (f) to the fullest extent permitted by Applicable Law, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents; (g) seek and obtain the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any Person, firm or other entity liable for the payment of the Debt; (h) to the fullest extent permitted by Applicable Law, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by

Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (I) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (II) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then deposited in the Escrow Fund, the Reserve Accounts and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any other Loan Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) any other items or expenses for which such Reserve or escrow was established; or (iv) (A) interest on the unpaid principal balance of the Note, (B) the unpaid principal balance of the Note; or (C) all other sums payable pursuant to the Note, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) prior to Borrower's cure, if applicable, of the Event of Default giving rise thereto and Lender's acceptance of such cure (whether voluntarily, as required under Section 11.11(b) hereof or as required by law) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; (l) pursue such other remedies as Lender may have under Applicable Law; (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Property, including any Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as Subsection 10.1(g) shall occur as to Borrower, Master Lessee (if the Master Lease Termination has not yet occurred) or any SPE Component Entity, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected, paid to or received by Lender after the occurrence of an Event of Default pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Section 11.3. **RIGHT TO CURE DEFAULTS.** Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes (to the fullest extent permitted by Applicable Law), or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4. **ACTIONS AND PROCEEDINGS.** Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5. **RECOVERY OF SUMS REQUIRED TO BE PAID.** Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6. **EXAMINATION OF BOOKS AND RECORDS.** Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and each other "Indemnitor" under the Indemnity Agreement delivered in connection herewith which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or such other Indemnitor or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and such other Indemnitor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and such other Indemnitor where the books and records are located. To the extent that any information obtained by Lender under this Section 11.6 constitutes Identified Information (defined below), the same shall be subject to the restrictions on circulating the same to the General Public as set forth in Section 19.5 below.

Section 11.7. **OTHER RIGHTS, ETC.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) Unless the applicable loss or damage is of a physical nature and directly caused by the affirmative acts of Lender or Lender's agents, it is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured.

Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 11.8. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9. VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may, until such violations are remedied, impose additional requirements upon Borrower in connection therewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times, subject to the rights of tenants under Leases.

Section 11.11. EXCULPATION: ACCEPTANCE OF CURE.

(a) All rights and remedies of Lender under this Security Instrument and the other Loan Documents are expressly made subject to the limitations and exculpations set forth in Article 15, below. In the event of any conflict between the terms and conditions hereof and those contained in Article 15 hereof, the terms and conditions of Article 15 hereof shall control.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender shall not refuse to accept a Complete Cure (defined below) by Borrower of any Event of Default by Borrower susceptible thereto unless Lender (A) has commenced foreclosure proceedings (judicial or non-judicial) and (B) is not otherwise required to accept such Complete Cure under Applicable Law. Lender and Borrower will return to a status quo pro ante after the consummation of any such Complete Cure by Borrower made in accordance with the foregoing. As used above, the term "Complete Cure" shall mean a complete and total cure of the applicable Event of Default in a manner reasonably acceptable to Lender, which such cure shall be deemed to include, without limitation, (A) both the payment of any sums due and the performance of any obligations under, in each case, the Loan Documents associated with such applicable Event of Default, (B) in the case of a non-monetary Event of Default, the performance of such additional acts (such as the furnishing of opinions) in connection therewith as may be reasonably required by Lender and (C) the payment of (1) any applicable Default Interest and (2) the entire amount of the Debt to the extent that the Debt shall have been accelerated in accordance with the applicable terms and conditions of the Loan Documents in connection with the applicable Event of Default and such acceleration is permitted under applicable law.

Article 12. ENVIRONMENTAL INDEMNITY

Section 12.1. ENVIRONMENTAL INDEMNITY. Simultaneously herewith, Borrower and Guarantor have executed and delivered the Environmental Indemnity to Lender, which Environmental Indemnity shall (a) constitute a Loan Document for all purposes hereof and of the other Loan Documents and (b) notwithstanding anything herein or any in other Loan Document to the contrary, not be secured by the Security Instrument (unless Lender expressly opts to the contrary in accordance with the express terms and conditions

of the Environmental Indemnity). As used herein, the term "Environmental Indemnity" shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

Article 13. INDEMNIFICATION

Section 13.1. **GENERAL INDEMNIFICATION.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties (defined below) and directly or indirectly arising out of or in any way relating to any one or more of the following which shall have occurred prior to the foreclosure of this Security Instrument (or delivery and acceptance of a deed in lieu of such foreclosure), except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (b) any accident, injury to or death of Persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (e) the failure of any Person other than an Indemnified Party to file timely with the Internal Revenue Service an accurate Form 1099 B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (f) any failure of the Property to be in compliance with any Applicable Laws; (g) the enforcement by any Indemnified Party of the provisions of this Article 13; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (i) the payment and/or non-payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (j) any misrepresentation made by Borrower in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date written notice demanding payment for the amount suffered as a result of such loss or damage is delivered to Borrower by Lender until paid. As used herein, the term "Indemnified Parties" means Lender and any Person who is or will have been involved in the origination of the loan evidenced by the Note, any Person who is or will have been involved in the servicing of the loan evidenced by the Note, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, Persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by the Note (including, but not limited to, Investors (as defined herein) or prospective Investors in the Securities (as defined herein), as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business)).

Section 13.2. MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Document, except for income taxes and franchise taxes (imposed in lieu of income taxes) imposed on an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the other Loan Documents) or any political subdivision or taxing authority thereof or therein. Notwithstanding the foregoing, Borrower shall have no indemnity obligations to any Indemnified Party under this Section to the extent that any such Losses arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party.

Section 13.3 DUTY TO DEFEND: ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party to whom indemnification is owed pursuant to the preceding provisions of this Article 13, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, if they reasonably believe that their interests are not properly being represented by the counsel selected by Borrower, engage their own attorneys and other professionals to defend them. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties to whom indemnification is owed pursuant to the preceding provisions of this Article 13, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Article 14. WAIVERS

Section 14.1. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Obligations. The foregoing shall not be deemed a waiver of Borrower's right to assert in a separate proceeding any claim against Lender which otherwise would constitute a defense, setoff, counterclaim or cross-claim of any nature arising from and after the date hereof.

Section 14.2. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Applicable Law.

Section 14.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Trustee or Lender except with respect to matters for which this Security Instrument, the Note, or the other Loan Documents provides for the giving of notice by Trustee or Lender to Borrower and except with respect to matters for which Trustee or Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Trustee or Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Trustee or Lender to Borrower or as required by law.

Section 14.4. DETERMINATIONS BY LENDER. Except as otherwise specifically set forth in the Note, this Security Instrument, or the other Loan Documents, wherever pursuant to this Security Instrument (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory,

and all other decisions and determinations made by Lender, shall be based upon a standard of reasonability. All approvals of or waivers by Lender in respect of any of the terms, conditions or requirements of this Security Instrument must be in writing. No waiver with respect to any condition, breach or other matter shall extend to or be taken in any manner whatsoever to affect any other condition, breach or matter or affect Lender's rights resulting therefrom.

Section 14.5. **SURVIVAL**. The indemnifications made pursuant to Section 13.3 shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto. Notwithstanding the foregoing, upon a permitted transfer of Borrower's fee interest in the Property pursuant to and in accordance with Article 8 or after Lender has obtained possession of the Property to the exclusion of Borrower in connection with an exercise of remedies under the Loan Documents, the transferring Borrower shall be released from any liability thereafter accruing under any such indemnification provision (other than as to matters which have already occurred).

Section 14.6. **WAIVER OF TRIAL BY JURY**. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Article 15. EXCULPATION

Section 15.1. **EXCULPATION**. All rights and remedies of Lender under this Security Instrument and the other Loan Documents are expressly made subject to the limitations and exculpations set forth in Article 14 of the Note, the provisions of which are incorporated herein by this reference. In the event of any conflict between the terms and conditions hereof and those contained in Article 14 of the Note, the terms and conditions of Article 14 of the Note shall control.

Article 16. NOTICES

Section 16.1. **NOTICES**. (a) All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower
and/or Master
Lessee:

Stephen and Sheryl Chaney, Trustees
Stephen Jay Chaney and Sheryl Lenox Chaney
Revocable Living Trust
6130 152nd Place SE
Snohomish, WA 98296

If to Lender:

4318 Navigator Lane, LLC
3500 188th St. SW, Suite 445
Lynnwood, WA 98037

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Security Instrument, "**Business Day**" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in Seattle, Washington.

Article 17. SERVICE OF PROCESS

Section 17.1. **CONSENT TO SERVICE.** (a) Borrower will maintain a place of business or an agent for service of process in Bellevue, Washington and give prompt notice to Lender of the address of such place of business and of the name and address of any new agent appointed by it, as appropriate. Borrower further agrees that the failure of its agent for service of process to give it notice of any service of process will not impair or affect the validity of such service or of any judgment based thereon. If, despite the foregoing, there is for any reason no agent for service of process of Borrower available to be served, and if it at that time has no place of business in Bellevue, Washington, then Borrower irrevocably consents to service of process by registered or certified mail, postage prepaid, to it at its address given in or pursuant to Section 16.1 above.

(b) Borrower initially designates Karp Business Law, Inc., P.S., with an address of 2208 NW Market Street, Suite 318, Seattle, Washington 98107-4049 to receive for and on behalf of Borrower service of process with respect to this Security Instrument and the other Loan Documents.

Article 18. APPLICABLE LAW

Section 18.1. **CHOICE OF LAW.** THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF WASHINGTON AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON AND APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA.

Section 18.2. **USURY LAWS.** This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by Applicable Law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 18.3. **PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 19. COSTS

Section 19.1. PERFORMANCE AT BORROWER'S EXPENSE.

(a) Subject to any applicable express limitations set forth herein and/or in the other Loan Documents, Borrower covenants and agrees to pay its own costs and expenses and pay, or, if Borrower fails to pay, to reimburse, Lender, upon receipt of written notice from Lender (but again subject to the express limitations set forth herein and/or in the other Loan Documents), for Lender's reasonable costs and expenses (including reasonable, actual attorneys' fees and disbursements) in each case, incurred by Lender in accordance with this Security Instrument or the other Loan Documents in connection with (i) the preparation, negotiation, execution and delivery of this Security Instrument, the Note and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower; (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Security Instrument, the Security Instrument, the Note and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution and delivery of any consents, amendments, waivers or other modifications to this Security Instrument, the Note and the other Loan Documents and any other documents or matters requested by Lender; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Security Instrument or the other Loan Documents; (v) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the lien in favor of Lender pursuant to this Security Instrument, the Security Instrument, the Note and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Security Instrument, the Note, the other Loan Documents, the Property, or any other security given for the Loan; and (vii) enforcing any obligations of or collecting any payments due from Borrower under this Security Instrument, the Note and the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Security Instrument and the other Loan Documents in the nature of a "work-out" or of any insolvency or bankruptcy proceedings (which such costs and expenses shall be deemed to include, without limitation and in each case, any special servicing fees, liquidation fees, modification fees, work-out fees and other similar costs or expenses payable to any servicer, trustee and/or special servicer of the Loan (or any portion thereof and/or interest therein)); provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

(b) Borrower acknowledges and confirms that Lender may (subject to any limitations contained elsewhere in this Security Instrument) impose certain reasonable administrative, processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) if an Event of Default occurs and the Loan is transferred to a special servicer, (d) obtaining certain consents, waivers and approvals required hereunder (including, without limitation, Rating Agency Confirmations), and/or (e) the review of any Major Lease, proposed Major Lease or any other Lease for which Lender's approval is required hereunder or the negotiation of material modifications to any SNDA (as provided above). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, or any governmental or quasi governmental authority. Subject to any applicable express limitations set forth herein and/or in the other Loan Documents, Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be reasonably imposed by Lender from time to time, upon the occurrence of any Event of Default. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in house staff or otherwise.

Section 19.2. ATTORNEYS' FEES FOR ENFORCEMENT. (a) Subject to any applicable express limitations set forth herein and/or in the other Loan Documents, Borrower shall pay all reasonable legal fees

incurred by Lender in connection with the items set forth in Section 20.1 above and (b) Borrower shall pay to Trustee or Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, reasonably incurred or paid by Trustee or Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Trustee or Lender until such expenses are paid by Borrower.

Article 20. DEFINITIONS

Section 20.1. **GENERAL DEFINITIONS.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one Person) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 21. MISCELLANEOUS PROVISIONS

Section 21.1. **NO ORAL CHANGE.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 21.2. **LIABILITY.** If there is more than one Borrower, the obligations and liabilities of each such Person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 21.3. **INAPPLICABLE PROVISIONS.** If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 21.4. **HEADINGS, ETC.** The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 21.5. **DUPLICATE ORIGINALS; COUNTERPARTS.** This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 21.6. **NUMBER AND GENDER.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 21.7. **SUBROGATION.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the

Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 21.8. **ENTIRE AGREEMENT.** The Note, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the other Loan Documents.

Section 21.9. **TAX DISCLOSURE.** Notwithstanding anything herein or in any other Loan Document to the contrary, except as reasonably necessary to comply with applicable securities laws, each party (and each employee, representative or other agent of each party) hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the United States federal income "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such parties (or their representatives) relating to such tax treatment and tax structure; provided, that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the United States federal income tax treatment or tax structure of the transactions contemplated hereby.

Section 21.11. **DUE ON SALE/ENCUMBRANCE.** Borrower expressly agrees that upon a violation of Article 8 of this Security Instrument by Borrower and acceleration of the principal balance of the Note because of such violation, Borrower will pay all sums required to be paid in connection with a prepayment, if any, as described in the Note, herein imposed on prepayment after an Event of Default and acceleration of the principal balance. Borrower expressly acknowledges that Borrower has received adequate consideration for the foregoing agreement.

Article 22. SPECIAL STATE OF WASHINGTON PROVISIONS

Section 22.1. **CONFLICTS.** In the event of any conflict between the provisions of this Article 22 and any provision of this Security Instrument or the other Loan Documents, then the provisions of this Article 22 shall control and be binding.

Section 22.2. POWER OF SALE.

(a) In addition to all other remedies of Lender, upon the occurrence of any Event of Default, Lender shall have the right to have the Property sold by its power of sale pursuant to the provisions of the laws of the State of Washington then in effect with respect to foreclosure pursuant to Lender's sale under deeds of trust or, at Lender's option, to have this Security Instrument foreclosed in judicial proceedings as a mortgage, and Lender shall have the right to exercise all other remedies provided for herein or by law, including the Uniform Commercial Code. All rights and remedies of Lender are cumulative. Lender may exercise rights and remedies at such times and in such order as Lender may elect in accordance with Applicable Law. In the exercise of rights and remedies, Property, whether real or personal, and any portions thereof, may be sold, whether at Trustee's sale or execution sale after judicial foreclosure or in any other manner permitted by law, in one parcel or several parcels as Lender may elect. Borrower agrees that a sale pursuant to the power of sale (or sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all of any part of the Property which may be personal property,

Lender shall have and exercise all the rights and remedies of a secured party under the Uniform Commercial Code. Whenever notice is permitted or required hereunder or under the Uniform Commercial Code, ten (10) days shall be deemed reasonable. If this Security Instrument is foreclosed as a mortgage in judicial proceedings, any judgment recovered, including a deficiency judgment if Lender shall be entitled to a deficiency, shall bear at the rate applicable to sums secured hereby after an Event of Default, not to exceed, however, the highest rate permitted by applicable law. Notwithstanding the foregoing, Lender shall not to foreclose on any fixtures, equipment or Personal Property prior to the expiration of the reinstatement period as provided in RCW § 61.24.090, if applicable.

(b) If Lender invokes the power of sale, Lender shall send written notice as prescribed by applicable law to Borrower and to the other persons prescribed by applicable law of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall give notice of sale by public advertisement as Lender deems proper to protect the interests of Borrower and Lender. After the time required by applicable law, Lender, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Lender determines. Lender may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute Lender or its designee may purchase the Property at any sale.

(c) Lender shall deliver to the purchaser Lender's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Lender shall apply the proceeds of the sale in the following order: (1) to all expenses of the sale, including, but not limited to, Trustee's fees and reasonable attorneys' fees, but such fees shall be limited to an amount that a judge would set as a reasonable fee in an uncontested mortgage foreclosure action; (2) to all sums secured by this Security Instrument; and (3) any excess to the person or persons legally entitled to it pursuant to RCW § 61.24.080.

Section 22.3. **NO AGRICULTURAL PURPOSES.** Borrower represents, warrants and covenants that the Property is not presently nor will during the term of this Deed of Trust be used principally or at all for agricultural or farming purposes.

Section 22.4. **USE OF PROCEEDS.** Borrower represents and warrants to Lender that the proceeds of the Loan will be used exclusively for construction of residential improvements to the Property. Additionally, Borrower represents and warrants to Lender that that this is not a consumer transaction, and that the Loan is a "commercial loan" as that term is defined in RCW § 61.24.005 and RCW § 61.24.100.

Section 22.5. **FUTURE ADVANCES.** In addition to (and without limitation of) the foregoing described obligations, this Security Instrument also secures future advances to Borrower, protective advances and all obligations of Borrower to Lender, direct or indirect, absolute or contingent in an amount up to the full amount of the Debt to the same extent as if the future obligation and/or advance were made as of the date of this Security Instrument.

Section 22.7. **INSURANCE.** Notwithstanding anything herein to the contrary, Borrower shall, under no circumstances, provide insurance in amounts in excess of those allowed pursuant to RCW §§ 48.27.010 and 48.27.020.

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

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT A
Legal Description of the "Land"

Lot 7, City of Anacortes, Short Plat No. SP-05-006, recorded September 21, 2010, under Auditor's File No. 201009210052, being a portion of Section 22, Township 35 North, Range 1 East, W.M., records of Skagit County, Washington.

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

written.

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above

Stephen J. Chaney

8-13-2020

Sheryl Lenox Chaney

8/13/2020

ACKNOWLEDGMENT

STATE OF WA
)ss.:COUNTY OF Snohomish

THIS IS TO CERTIFY that on this 13 day of AUG, 2020 before me, the undersigned, a notary public in and for the State of Washington duly commissioned and sworn, personally appeared Stephen Jay Chaney, to me known to be the Trustee of the Stephen Jay Chaney and Sheryl Lenox Chaney Revocable Living Trust, a Washington trust that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Trustee for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

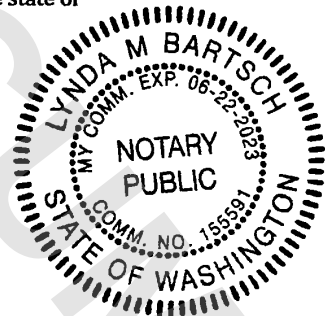
WITNES my hand and official seal the day and year in this certificate first above written.

Signature

Lynda M Bartsch
Print Name:

My appointment expires: 06/22/2023STATE OF WA
)ss.:COUNTY OF Snohomish

Notary Public in and for the state of
Washington, residing at
Shobline



THIS IS TO CERTIFY that on this 13 day of AUG, 2020 before me, the undersigned, a notary public in and for the State of WA, duly commissioned and sworn, personally appeared

Sheryl Lenox Chaney, to me known to be the Trustee of the Stephen Jay Chaney and Sheryl Lenox Chaney Revocable Living Trust, a Washington trust that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Trustee for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

WITNES my hand and official seal the day and year in this certificate first above written.

Lynda M Bartsch
Signature

Lynda M. Bartsch
Print Name:

My appointment expires:

06/22/2023

Notary Public in and for the state of
Washington, residing at
Shoreline

