

**POOR ORIGINAL**

**AFTER RECORDING MAIL TO:**

Fabyanske, Westra, Hart & Thomson, P.A.  
333 South Seventh Street  
Suite 2600  
Minneapolis, Minnesota 55402  
Attention: Rory O. Duggan, Esq.

**CHICAGO TITLE**  
*0200500dp*

**DEED OF TRUST, SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**

(Washington)

**Coversheet Recording Information:**

**GRANTOR:** Hodgin Corner, LLC, a Washington limited liability company  
**GRANTEE:** Colliers Funding LLC, a Delaware limited liability company  
**GRANTEE** Chicago Title Insurance Company  
**(Trustee):**

**ABBREVIATED**  
**LEGAL** Ptn SW SE 23-35-4  
**DESCRIPTION:** The complete legal description is on Exhibit A.

**ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NO.:**  
P135489 / 8103-000-003-0000

**DEED OF TRUST, SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**  
(Washington)

**THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT** (the “Deed of Trust”), is made and given as of this 8<sup>th</sup> day of December, 2021, by HODGIN CORNER, LLC, a Washington limited liability company (the “Grantor”), whose address is % The RJ Group, 222 Grand Avenue, Suite C, Bellingham, Washington 98225 to CHICAGO TITLE INSURANCE COMPANY (the “Trustee”), whose address is 425 Commercial Street, Mt Vernon, Washington 98273, as trustee for the benefit of COLLIERS FUNDING LLC, a Delaware limited liability company (the “Beneficiary”), whose address is 90 South Seventh Street, Suite 4300, Minneapolis, Minnesota 55402.

For purposes of Article 9 of the Uniform Commercial Code (RCW 62A.9A), this Deed of Trust constitutes a Security Agreement with Grantor being the Debtor and Beneficiary being the Secured Party. This Deed of Trust also constitutes a Financing Statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code, RCW 62A.9A-502(c).

**PRELIMINARY RECITALS**

A. Pursuant to a certain Construction and Term Loan Agreement between Grantor and Beneficiary dated of even date herewith (with all amendments, modifications and supplements, the “Loan Agreement”), Beneficiary has agreed to make a construction and term loan to Grantor in the sum of up to \$17,500,000.00 (the “Loan”) to finance a portion of the costs of acquiring the Real Property described herein and constructing a multifamily apartment building with 76 apartment units and 10 live/work units and related amenities and improvements on such Real Property described herein. Unless the context otherwise indicates, all capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Loan Agreement.

B. The Loan is evidenced by a Promissory Note dated of even date herewith, executed and delivered by Grantor payable to the order of Beneficiary in the original principal amount of \$17,500,000.00 (with all amendments, modifications, supplements, replacements and extensions, the “Note”).

C. The Loan bears interest at a variable rate or rates as more fully set forth in the Note, except that during the period of and continuance of an Event of Default hereunder the Note shall bear interest at a per annum rate of interest of the lesser of (a) four percent (4%) in excess of the interest rate in effect on the Note from time to time or (b) the maximum lawful rate of interest permitted to be paid on the Note, whether or not Beneficiary has exercised its option to accelerate the maturity of the Note and declare the entire unpaid Indebtedness Secured Hereby (as defined herein) due and payable as more fully set forth in the Note (the “Default Rate”); such rate as in effect from time to time pursuant to the Note is the “Interest Rate”.

D. As security for the repayment of the Loan as evidenced by the Note, Grantor is executing and delivering this Deed of Trust.

E. The Loan is payable in installments with a final installment payment of the principal balance and all accrued and unpaid interest due on June 30, 2023 (the "Maturity Date"), subject to an extension until June 30, 2024 pursuant to the terms of the Loan Agreement.

F. As security for the repayment of the Note, Robert Janicki (the "Guarantor") is executing and delivering to Beneficiary a Guaranty dated of even date herewith (with all amendments, modifications, supplements, replacements and extensions, the "Guaranty").

NOW, THEREFORE, in consideration of the making of the Loan and the sum of One and 00/100 Dollar (\$1.00) to Grantor in hand paid, the receipt of which is hereby acknowledged, and for the purposes aforesaid, Grantor hereby GRANTS, BARGAINS, SELLS, ASSIGNS, TRANSFERS AND CONVEYS unto Trustee, its successors and assigns, in trust WITH A POWER OF SALE, AND RIGHT OF ENTRY AND POSSESSION, FOR THE BENEFIT OF BENEFICIARY, AND GRANTS TO BENEFICIARY A SECURITY INTEREST IN all of the following properties hereinafter set forth (all of the following being hereinafter collectively referred to as the "Premises"):

**A. REAL PROPERTY**

All the tracts or parcels of real property lying and being in the County of Skagit, State of Washington, all as more fully described in Exhibit A attached hereto and made a part hereof, together with all the estates and rights in and to the real property and in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, structures, improvements, fixtures and annexations, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the real property; together with all water rights (whether riparian, appropriative or otherwise whether or not appurtenant) now or hereafter relating to or used in connection with the real property, and all shares of stock, if any, evidencing such rights (the "Real Property").

**B. BUILDINGS**

All buildings and improvements now or hereafter located on the Real Property (the "Buildings").

**C. EQUIPMENT, INVENTORY, FIXTURES AND GOODS**

All equipment, inventory, fixtures and goods, owned or hereafter acquired by Grantor and now or hereafter attached to, located at, or placed in the improvements on the Real Property including, without limitation (i) all machinery, fittings, fixtures, apparatus, appliances, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, waste disposal, power, refrigeration, ventilation, and fire and sprinkler protection, (ii) all maintenance supplies and repair equipment, (iii) all draperies, carpeting, floor coverings, screens, storm windows and window coverings, blinds, awnings, shrubbery and plants, (iv) all elevators,

escalators and shafts, motors, machinery, fittings and supplies necessary for their use, and (v) all building materials and supplies now or hereafter delivered to the Premises (it being understood that the enumeration of any specific articles of property shall in no way be held to exclude any items of property not specifically enumerated), as well as renewals, replacements, proceeds, additions, accessories, increases, parts, fittings, insurance payments, awards and substitutes thereof, together with all interest of Grantor in any such items hereafter acquired, as well as Grantor's interest in any lease or conditional sales agreement under which the same is acquired, all of which personal property mentioned herein shall be deemed fixtures and accessory to the freehold and a part of the realty and not severable in whole or in part without material injury to the Premises (the "Equipment"), but excepting therefrom the trade fixtures, inventory, equipment and removable property owned by any tenant.

**D. RENTS, LEASES AND PROFITS**

All rents, income, contract rights, leases and profits now due or which may hereafter become due under or by virtue of any lease, sublease, license or agreement, whether written or verbal, for the use or occupancy of the Premises or any part thereof, including, without limitation, any subsidy payments received from any source, together with all of Grantor's rights to all tenant security deposits with respect to any such leases, licenses and agreements and all interest thereon, whether now owned by Grantor or hereafter acquired or arising (the "Rents" and the "Lease" or "Leases," as applicable).

**E. INSURANCE PROCEEDS**

All awards, payments or proceeds now or hereafter payable under any policy of insurance insuring the Premises including, without limitation, to the proceeds of casualty insurance, title insurance, business interruption/rents insurance or other insurance maintained with respect to the Premises, whether now owned by Grantor or hereafter acquired or arising.

**F. JUDGMENTS AND AWARDS**

All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Premises, including, without limitation, any awards for damages sustained to the Premises, for a temporary taking, change of grade of streets or taking of access, whether now owned by Grantor or hereafter acquired or arising.

**G. INTANGIBLES**

All contracts, licenses, permits, management records, software, files, consents, governmental approvals and intangibles used, useful or required in the ownership, management, operation or development of the Premises, together with all soil reports, building permits, variances, licenses, utility permits and other permits and agreements relating to the construction or equipping of the improvements on the Premises, or the operation or maintenance of the Premises, including, without limitation, all warranties and contract rights, whether now owned by Grantor or hereafter acquired or arising.

## **H. CONSTRUCTION CONTRACTS**

Each contract or agreement for the design, construction, furnishing and equipping of the improvements located or to be located on the Premises, together with all right, title and interest of Grantor in and to any existing or future changes, extensions, revisions, modifications, guarantees of performance or warranties of any kind thereunder, whether now owned by Grantor or hereafter acquired or arising.

## **I. PLANS AND SPECIFICATIONS**

All plans and specifications, all surveys, site plans, soil reports, drawings and papers relating to the Premises and the design, construction, furnishing and equipping of the improvements on the Premises, whether now owned by Grantor or hereafter acquired or arising.

## **J. PERMITS AND LICENSES**

All building permits, operating permits, variances, licenses, utility permits and other permits, licenses and agreements relating to the construction, equipping, operation or maintenance of the Premises including, without limitation, all warranties and contract rights, whether now owned by Grantor or hereafter acquired or arising.

## **K. BUILDING SUPPLIES**

All building supplies and materials ordered or purchased for use in connection with the construction and equipping of the improvements on the Premises, whether now owned by Grantor or hereafter acquired or arising.

## **L. SERVICE AGREEMENTS**

All rights and interests of Grantor in and under any and all service and other agreements relating to the operation, management, maintenance and repair of the Premises or the buildings and improvements thereon, whether now owned by Grantor or hereafter acquired or arising, including, without limitation, all right, title and interest of Grantor in and to the Property Management Agreement.

## **M. DEPOSITS AND REVENUES**

All rights and interests of Grantor, whether now owned or hereafter acquired or arising, in, and to any and all deposits and revenues relating to the Premises, including, without limitation, security deposits, replacement revenue escrows, tax and insurance escrows and working capital reserves or escrows.

## **N. OTHER PERSONAL PROPERTY**

All Accounts, Chattel Paper, Controlled Property, Deposit Accounts, Documents, Goods, General Intangibles, Instruments and Equipment, as such terms are defined in the Washington Uniform Commercial Code in effect from time to time (the "Code"), with respect to the Premises, now owned by Grantor or hereafter acquired or arising.

**O. PROCEEDS**

All proceeds, products, accessions and supporting obligations thereto.

It is specifically understood that the enumeration of any specific articles of property shall not exclude or be held to exclude any items of property not specifically mentioned. At the option of Beneficiary, all of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises and shall for the purposes of this Deed of Trust be deemed to be real estate and conveyed and mortgaged hereby.

**TO HAVE AND TO HOLD** the Premises unto Trustee and its successors, substitutes or assigns in trust for the benefit of Beneficiary for the uses and purposes herein set forth, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject to the Permitted Exceptions, and Grantor, for Grantor and Grantor's successors, substitutes and assigns, hereby agrees to **WARRANT AND FOREVER DEFEND**, all and singular, the Premises unto Trustee, Beneficiary, and their respective successors, substitutes or assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof subject however as aforesaid, all for the purposes of securing the full payment and performance of the following obligations:

- (i) all sums due and owing on the Note or pursuant to the Loan Agreement (the terms and conditions of the Note and the Loan Agreement are incorporated herein by reference and made a part hereof), with interest thereon at the variable rate or rates set forth therein; the unpaid principal balance pursuant to the Note and all amounts advanced or to be advanced pursuant to the Note, together with interest thereon, payable to Beneficiary pursuant to the Note, if not sooner due, shall be due and payable in any event on the Maturity Date;
- (ii) subject to Section 10.22 of this Deed of Trust, all other obligations, liabilities, covenants and agreements, now existing or hereafter arising, of Grantor to Beneficiary hereunder, under the Note, under the Loan Agreement or under the other instruments which refer to or secure the Note, but specifically excluding the Indemnity and the Guaranty (hereinafter collectively referred to as the "Loan Documents"; and individually referred to as a "Loan Document"); and
- (iii) all sums, with interest thereon at the same rate or rates as specified in the Note and the Loan Agreement, advanced in protecting the lien of this Deed of Trust or the Collateral (as defined herein), including taxes, assessments, charges, claims, fines, impositions, insurance premiums, amounts due upon prior or superior mortgages and other prior or superior liens, encumbrances and interests,

Beneficiary's and Trustee's fees provided for herein or in the other Loan Documents and legal expenses and attorneys' fees and all sums advanced for any other purpose authorized herein (the Note and all such sums, together with interest thereon, and all such obligations being hereinafter collectively referred to as the "Indebtedness Secured Hereby").

Provided, nevertheless, that these presents are upon the express condition that, if Grantor shall pay or cause to be paid in full the Indebtedness Secured Hereby, and if Grantor shall strictly observe and perform all of the terms, covenants and conditions herein, in the Loan Agreement and in the other Loan Documents, this Deed of Trust shall become null and void and of no force and effect and Grantee will request that Trustee reconvey the Premises without warranty to the person or persons legally entitled thereto to Grantor at Grantor's expense. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts will be conclusive proof of the truthfulness thereof. As a condition to any such satisfaction or reconveyance, Borrower covenants and agrees to pay Grantee's and Trustee's reasonable fees and expenses (including attorneys' fees and expenses) in connection with reconveying the Premises.

**AND GRANTOR FURTHER COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE 1**

**GENERAL COVENANTS, AGREEMENTS, WARRANTIES**

1.1 Payment of Indebtedness; Observance of Covenants. Grantor shall duly and punctually pay each and every installment of principal, interest, and other payments due under the Note and all other Indebtedness Secured Hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other instrument given as security for the payment of the Note.

1.2 Construction; Maintenance; Repairs. Grantor shall complete the improvements to be constructed on the Premises pursuant to the Loan Agreement, free and clear of any and all liens. Grantor shall not abandon the Premises, shall keep and maintain the Premises in good condition, repair, maintenance and operating condition free from any waste or misuse, and shall promptly repair and restore any buildings, improvements or structures now or hereafter on the Premises which may become damaged or destroyed to their condition prior to any such damage or destruction. Except for the construction to be undertaken pursuant to the Loan Agreement, without the prior consent of Beneficiary, Grantor agrees that it will not construct or expand any improvements on the Premises, erect any new improvements nor make any material alterations in any improvements which shall alter the basic structure, decrease the market value or change the existing architectural character of the Premises, nor remove or demolish any improvements and shall complete any buildings now or hereafter in the process of being erected on the Premises as required by the Loan Agreement.

1.3 Compliance with Laws. Grantor shall comply with all requirements of law, municipal ordinances, regulations, private restrictions and covenants affecting the Premises and shall not acquiesce in or seek any rezoning classification affecting the Premises.

1.4 Payment of Operating Costs; Prior Deeds of Trust and Liens. Grantor shall pay all operating costs and expenses of the Premises (except as provided in Section 1.6), shall keep the Premises free from levy, attachment, mechanics', materialmens' and other liens ("Liens") and shall pay when due all indebtedness which may be secured by a mortgage, deed of trust, lien or charge on the Premises.

1.5 Payment of Impositions. Except as provided in Section 1.6, Grantor shall pay when due and in any event before any penalty or interest attaches, all taxes, installments of assessments, governmental charges, water charges, sewer charges and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein or accruing by reason of the operation of the Premises by Grantor, including, without limitation, sales, use, employment and other taxes based on such operations ("Impositions") and will on demand furnish Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a mortgagee the payment of the whole or any part of the Impositions herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust or a mortgagee's interest in mortgaged premises, so as to impose such Imposition on Beneficiary or on the interest of Beneficiary in the Premises, then, in any such event, Grantor shall bear and pay the full amount of such Impositions; provided, however, that if for any reason payment by Grantor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the Indebtedness Secured Hereby wholly or partially usurious, Beneficiary, at its option, may declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable in accordance with the terms of the Note, or Beneficiary may, at its option, pay that amount or portion of such Imposition as renders the Indebtedness Secured Hereby unlawful or usurious, in which event Grantor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said Imposition.

1.6 Contest of Liens and Impositions. Grantor shall not be required to pay, discharge or remove any Lien or Imposition so long as Grantor shall in good faith contest the same or the validity thereof by appropriate legal proceedings so long as such proceedings operate to prevent the collection or enforcement of the Lien or Imposition so contested and the sale of the Premises, or any part thereof, to satisfy the same; provided, however, Grantor shall, as a condition of any such contest, have paid that portion of the Lien or Imposition as may be required by law, and shall, prior to the date such Lien or Imposition is originally due and payable without such contest, have given Beneficiary such reasonable security as may be demanded by Beneficiary to insure such payments plus interest or penalties thereon, and prevent any sale or forfeiture of the Premises by reason of such nonpayment or shall have caused any such Lien or Imposition to be discharged of record by posting a bond as permitted by law. Any such contest shall be prosecuted with due diligence and Grantor shall promptly after final determination thereof pay the amount of any such Lien or Imposition so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding these provisions, Grantor shall (and if Grantor shall fail so to do, Beneficiary may but shall not be required to) pay any such Lien or Imposition notwithstanding such contest if in the reasonable opinion of Beneficiary, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed.

1.7 Protection of Security. Grantor shall promptly notify Beneficiary of and appear in and defend any suit, action or proceeding that affects Grantor or the Premises or the timely performance of any obligation of Grantor hereunder or under the other Loan Documents, or on the rights or interest of Beneficiary hereunder and Beneficiary may elect to appear in or defend any such action or proceeding with counsel selected by Grantor and approved by Beneficiary. Grantor agrees to indemnify and reimburse Beneficiary from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including, without limitation, costs of evidence of title and attorneys' fees incurred by Beneficiary and such amounts together with interest thereon at the Interest Rate in effect from time to time shall become additional "Indebtedness Secured Hereby" and shall become immediately due and payable.

1.8 Financial Statements. Grantor shall furnish to Beneficiary the Required Financial Reports of Grantor, Guarantors and the Premises as and when required by the Loan Agreement. In the event Grantor or Guarantor fails to furnish any such statements when required by the Loan Agreement, and Grantor fails to cure such failure within fifteen (15) days after written notice to Grantor, the same shall be an Event of Default hereunder and in addition to any other remedies available to Beneficiary, Beneficiary may cause an audit to be made of the books and records of Grantor pursuant to the terms of the Loan Agreement.

1.9 Additional Assurances. Grantor agrees upon the request by Beneficiary to execute and deliver such further instruments, deeds and assurances including, without limitation, financing statements under the Code and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clause hereof, or intended by the parties so to be. Grantor agrees to pay any recording fees, filing fees, note taxes, mortgage registry taxes, documentary stamp taxes, intangible taxes, or other charges arising out of or incident to the filing or recording of this Deed of Trust, such further assurances and instruments and the issuance and delivery of the Note.

1.10 Current Compliance with Laws. The Premises as improved on the date hereof complies with all material requirements of laws, including, without limitation, requirements of any Federal, State, County, City or other governmental authority having jurisdiction over Grantor or the Premises and including, without limitation, any applicable zoning, occupational safety and health, energy and environmental laws, ordinances and regulations; and Grantor has obtained, or will obtain in the ordinary course of business, and will maintain all necessary consents, permits and licenses to construct, occupy and operate the Premises for its intended purposes a multifamily apartment and live/work project.

1.11 Title. Grantor is the lawful owner of and has good and marketable fee simple absolute title to the Premises. Grantor will warrant and defend title to the same free of all liens and encumbrances, other than Permitted Exceptions. Grantor has good right and lawful authority to grant, bargain, sell, convey, mortgage and grant a security interest in the Premises as provided herein.

1.12 Loan Agreement. This Deed of Trust secures an obligation incurred for the construction of an improvement on land and is a "construction mortgage" as that term is used in

the Code. This Deed of Trust is the Deed of Trust referred to in, and is given as security for the due and punctual performance, observance and payment by Grantor of the terms and conditions set forth in, the Loan Agreement, the terms and conditions of which are incorporated herein by reference. In addition to its remedies hereunder during the continuance of an Event of Default, Beneficiary may, but shall not be required to, avail itself of any or all of the rights and remedies available to it under the Loan Agreement, and any sums expended by Beneficiary in availing itself of such rights and remedies shall bear interest thereon at the Interest Rate and shall be so much additional Indebtedness Secured Hereby, and shall be payable to Beneficiary immediately upon demand; provided, however, no such payment by Beneficiary shall be considered as waiving any such Event of Default.

1.13 Compliance with Americans with Disabilities Act and Fair Housing Act. Grantor covenants and agrees that it will construct the Project such that, upon Completion, the Premises will comply with the requirements of the Americans with Disabilities Act and the Fair Housing Act, as the same may be amended from time to time, during the entire term of this Deed of Trust and that it will comply with any requirements applicable to the Premises established by any federal, state or local governmental authorities having jurisdiction over such matters. All future maintenance, renovation, repair and construction conducted on the Premises shall be completed in accordance with the Americans with Disabilities Act and the Fair Housing Act, as applicable. Failure to comply with the provisions of the Americans with Disabilities Act or the Fair Housing Act shall constitute an Event of Default under the terms of this Deed of Trust and shall entitle Beneficiary to exercise all remedies available to it hereunder and under the other Loan Documents.

## ARTICLE 2 INSURANCE AND ESCROWS

2.1 Insurance. Grantor shall obtain, pay for and keep in full force and effect during the term of this Deed of Trust at its sole cost and expense the policies of insurance required by the Loan Agreement.

In the event of a foreclosure of this Deed of Trust or any acquisition of the Premises by Beneficiary, all such policies and all proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of Beneficiary to be utilized at its discretion. In the event of foreclosure or the failure to obtain and keep any required insurance Grantor empowers Beneficiary to effect insurance upon the Premises at Grantor's expense and for the benefit of Beneficiary in the amounts and types provided in the Loan Agreement for a period of time covering the time of redemption from foreclosure sale and, if necessary therefor, to cancel any or all existing insurance policies. Grantor agrees to pay Beneficiary the costs incurred by Beneficiary in determining, from time to time, whether the Premises are located within an area having special flood hazards. Such fees shall include the fees charged by any organization providing such services.

2.2 Escrows. Subject to the terms of the Escrow Waiver Letter, Grantor shall deposit with Beneficiary, or at Beneficiary's request, with its servicing agent or a bank designated by Beneficiary, on the first (1<sup>st</sup>) day of each and every calendar month hereafter as a deposit to pay the costs of taxes, assessments and insurance premiums next due as to the Premises (the "Charges"):

- (a) Initially a sum such that the amounts to be deposited pursuant to Section 2.2 (b) and such initial sum shall be equal to the estimated Charges for the next due payment thereon; and
- (b) Thereafter an amount equal to one-twelfth (1/12th) of the estimated annual Charges due on the Premises.

Beneficiary will, upon the presentation to Beneficiary by Grantor of the bills therefor, pay the Charges from such deposits or will, upon presentation of receipted bills therefor, reimburse Grantor from such deposits and payments made by Grantor. No amount so paid to Beneficiary shall be deemed to be trust funds. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then Grantor shall pay to Beneficiary on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be credited to subsequent payments to be made for such items. If an Event of Default shall occur under the terms of this Deed of Trust, Beneficiary may, at its option, without being required so to do, apply any deposits on hand to the Indebtedness Secured Hereby, in such order and manner as Beneficiary may elect. When the Indebtedness Secured Hereby has been fully paid, any remaining deposits shall be returned to Grantor as its interest may appear. All deposits are hereby pledged as additional security for the Indebtedness Secured Hereby, shall be held for the purposes for which made as herein provided, may be held by Beneficiary or its servicing agent or such designated bank and may be commingled with other funds of Beneficiary or its servicing agent or such designated bank, shall be held without any allowance of interest thereon and shall not be subject to the decision or control of Grantor. Any such agent or designated bank shall execute a control agreement to perfect the security interest of Beneficiary in such account, in form and substance satisfactory to Beneficiary. Neither Beneficiary nor its servicing agent or such designated bank shall be liable for any act or omission made or taken in good faith. In making any payments, Beneficiary or its servicing agent or such designated bank may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the taxes shown in the tax statement shall be levied on property more extensive than the Premises, then the amounts escrowed shall be based on the entire tax bill and Grantor shall have no right to require an apportionment and Beneficiary or its servicing agent may pay the entire tax bill notwithstanding that such taxes pertain in part to other property and Beneficiary shall be under no duty to seek a tax division or apportionment of the tax bill.

ARTICLE 3  
UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

3.1 Security Agreement. This Deed of Trust shall constitute a security agreement as defined in the Code, with Grantor, as debtor, and Beneficiary as secured party, in any of the Premises that is determined to be personal property pursuant to the Code in which Grantor has an interest (the "Collateral"). Grantor hereby assigns to Beneficiary, and grants to Beneficiary a security interest in all of the Collateral to secure payment and performance of the Indebtedness Secured Hereby. Any Collateral installed in or used in the Premises is to be used by Grantor solely for Grantor's business purposes or as the equipment and fixtures leased or furnished by Grantor, as landlord, to tenants of the Premises and such Collateral will be kept at the Buildings and will not be removed therefrom without the consent of Beneficiary and may be affixed to such Buildings but will not be affixed to any other real estate. The remedies of Beneficiary hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of Beneficiary, including, without limitation, having any Collateral deemed part of the realty upon any foreclosure thereof. If notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to Beneficiary. Neither the grant of a security interest pursuant to this Deed of Trust nor the filing of a financing statement pursuant to the Code shall ever impair the stated intention of this Deed of Trust that all Collateral comprising the Premises and at all times and for all purposes in all proceedings both legal or equitable shall be regarded as part of the real property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement.

3.2 Authorization to File. Grantor expressly authorizes Beneficiary to file any and all financing statements required to perfect and continue the perfection of, any security interests hereunder without the debtor's signature. Grantor agrees to provide Beneficiary advance written notice of (i) any change of Grantor's name, and (ii) any change of Grantor's jurisdiction of its organization. Grantor shall pay all expenses incurred by Beneficiary in connection with the renewal, extensions or amendment of any financing statements with regard to Beneficiary's security interest in the Premises. Grantor shall not, without the prior written approval of Beneficiary, file any amendment or termination of any financing statement with regard to Beneficiary's security interest in the Premises.

3.3 Maintenance of Property. Subject to the provisions of this Section, provided no Event of Default has occurred and is continuing, in any instance where Grantor in its sound discretion determines that any item subject to a security interest under this Deed of Trust has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Premises, Grantor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function; provided, however, that such removal and substitution shall not impair the operating utility and unity of the Premises. All substituted items shall become a part of the Premises and subject to the lien of this Deed of Trust. Any amounts received or allowed Grantor upon the sale or other disposition of the removed items of property shall be applied first against the cost of acquisition and installation of the substituted items.

3.4 Fixture Filing. THIS DEED OF TRUST SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING A PART OF THE COLLATERAL WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PREMISES.

3.5 Required Information. FOR PURPOSES OF THE CODE, THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the Grantor ("Debtor") is:

Hodgin Corner, LLC  
% The RJ Group  
222 Grand Avenue, Suite C  
Bellingham, Washington 98225  
Attention: Mollie Janicki

- (b) The name and address of the record owner of the Real Estate are:

Hodgin Corner, LLC  
% The RJ Group  
222 Grand Avenue, Suite C  
Bellingham, Washington 98225  
Attention: Mollie Janicki

(c) Debtor is a limited liability company organized under the laws of the State of Washington.

- (d) The name and address of the Beneficiary (as "Secured Party") is:

Colliers Funding LLC  
Suite 4300  
90 South Seventh Street  
Minneapolis, MN 55402  
Attention: Loan Servicing Department

- (e) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its above address.

- (f) This document covers goods which are or are to become fixtures.

ARTICLE 4  
APPLICATION OF INSURANCE AND AWARDS

4.1 Damage or Destruction of the Premises. Grantor shall give Beneficiary prompt notice of any damage to or destruction of the Premises. In case of a loss covered by policies of insurance, Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds

payable therefrom. Except as provided in the preceding sentence, Grantor may itself adjust and collect for any losses arising out of any such damage or destruction; provided, however, if any losses arising out of a single occurrence aggregate more than Fifty Thousand and No/100ths Dollars (\$50,000.00), Grantor shall obtain Beneficiary's prior written consent to any settlement. Any expense incurred by Beneficiary in the adjustment and collection of insurance proceeds (including, without limitation, the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to Beneficiary first out of any proceeds. Except as provided in Section 4.4, the proceeds or any part thereof from any damage or destruction shall be applied to reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.2 Condemnation. Grantor shall give Beneficiary prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Premises and hereby assigns, transfers and sets over to Beneficiary the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Premises taken or damaged under such eminent domain or condemnation proceedings, Beneficiary being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Grantor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Premises or agreeing to a settlement unless prior written consent of Beneficiary is obtained. Any expenses incurred by Beneficiary in intervening in such action or collecting such proceeds, including, without limitation, attorneys' fees incurred by Beneficiary, shall be reimbursed to Beneficiary first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises, the choice of application to be solely at the discretion of Beneficiary.

4.3 Disbursement of Insurance and Condemnation Proceeds. Any restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to plans and specifications approved by Beneficiary. In any case where Beneficiary may elect to apply the proceeds to repair or restoration or permit Grantor to so apply the proceeds they shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Grantor shall on demand deposit with Beneficiary any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Beneficiary may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Beneficiary be applied on account of the Indebtedness Secured Hereby then most remotely to be paid, whether due or not, without application of any prepayment premium, or to the cost of any ongoing construction on the Premises or shall be returned to Grantor, the choice of application to be solely at the discretion of Beneficiary.

4.4 Beneficiary to Make Proceeds Available. Notwithstanding the foregoing, in the event of an insured casualty to the Premises ("Casualty") such that the Improvements then located thereon or contemplated by the Loan Agreement have not been totally destroyed and may

be repaired to their prior condition prior to the Completion Date, or with respect to a Casualty, occurring after the Completion Date, within six (6) months from the date of the Casualty, but not later than the Maturity Date, Beneficiary agrees, unless an Event of Default has occurred and is continuing, to make the proceeds payable from such event ("Insurance Proceeds") available to the restoration or repair of such Improvements under the following conditions:

- (a) The Improvements to be constructed on the Premises in accordance with the Loan Agreement can be restored to a complete architectural unit pursuant to the Approved Plans or other plans and specifications acceptable to Beneficiary so that such Improvements have the same use and, in the case of Casualty, substantially the same value after restoration as that prior to the Casualty;
- (b) Grantor shall provide a sworn construction cost statement to Beneficiary itemizing the full cost of restoration and completion of the Improvements contemplated by the Loan Agreement;
- (c) The Insurance Proceeds are sufficient to complete such repair or restoration or Grantor shall deposit with Beneficiary prior to commencing repair or restoration such amount as is necessary to assure completion;
- (d) Disbursement of Insurance Proceeds shall be made not more frequently than once a month for restoration work completed and in place pursuant the terms of the Disbursing Agreement;
- (e) The Insurance Proceeds shall be held by Beneficiary or a bank designated by Beneficiary without interest;
- (f) Grantor shall provide to Beneficiary adequate evidence at the time of each disbursement that the cost of restoration has been paid or will be paid from such disbursement and Beneficiary shall be given such lien protection as Beneficiary shall require, including, without limitation, lien waivers and an endorsement to Beneficiary's title policy as provided in the Disbursing Agreement;
- (g) No Event of Default shall exist at the time of each disbursement of the Insurance Proceeds; and
- (h) Grantor shall pay any actual expense Beneficiary incurs, including, without limitation, any escrow expenses and any costs and expenses for title insurance.

ARTICLE 5  
LEASES AND RENTS

5.1 Assignment of Leases and Rents. To further secure the Indebtedness Secured Hereby, Grantor does hereby sell, assign and transfer unto Beneficiary all of the Leases, and all

of the Rents, now due and which may hereafter become due under or by virtue of any Lease, whether written or verbal, or any agreement for the use or occupancy of the Premises, it being the intention of this Deed of Trust to establish an absolute present transfer and assignment of all such Leases and agreements and all of the Rents from the Premises unto Beneficiary and Grantor does hereby appoint irrevocably Beneficiary its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of the Rents and apply the Rents from the Premises to the costs and expenses of operation, management and collection, including, without limitation, attorneys' fees, to the payment of the fees and expenses of any agent, or receiver so acting, to the payment of taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Premises, to the performance of the landlord's obligation under the Leases and to any Indebtedness Secured Hereby all in such order as Beneficiary may determine.

Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, at its option, without notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, subject to and in accordance with applicable law and regulation, collect all of the Rents and enforce the payment thereof, and all of the rights of Grantor under the Leases and all of the rights of Beneficiary hereunder, and may enter upon, take possession of, manage and operate the Premises, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify Rents, and do any acts which Beneficiary deems proper to protect the security hereof with or without taking possession of the Premises, and may apply the same to the costs and expense of operation, management and collection, including, without limitation, attorneys' fees, to the payment of the fees and expenses of any agent or receiver so acting, to the payment of taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Premises, to the performance of the landlord's obligation under the Leases and to any Indebtedness Secured Hereby all in such order as Beneficiary may determine. The entering upon and taking possession of the Premises, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Default or Event of Default or waive, modify or affect notice of default under the Loan Agreement, the Note, this Deed of Trust or any other Loan Document or invalidate any act done pursuant to such notice nor in any way operate to prevent Beneficiary from pursuing any remedy which it now or hereafter may have under the terms or conditions of this Deed of Trust or the Note or any other instrument securing the same.

It is the intention of the parties that this Article 5 shall confer upon Beneficiary the fullest rights, remedies and benefits available under the laws of the State of Washington for the appointment of a receiver, the assignment of Rents and Leases as security for the Loan and the collection and application of Rents from the Premises.

5.2 Grantor to Comply with Leases. Grantor will, at its own cost and expense:

- (a) Upon Beneficiary's request, provide Beneficiary with a copy of all Leases of the Premises;
- (b) Use commercially reasonable efforts and its best business judgment to faithfully abide by, perform and discharge each and every obligation,

covenant and agreement under any Lease of the Premises to be performed by the landlord thereunder;

- (c) Use commercially reasonable efforts and its best business judgment to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases by the tenants thereunder to be performed;
- (d) Not borrow against, pledge or further assign any Rents due under the Leases;
- (e) Not permit the prepayment of any Rents due under any Lease for more than one (1) month in advance nor for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any such Rents;
- (f) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases; and
- (g) Not consent to a subordination of the interest of any tenant to any party other than Beneficiary and then only if specifically consented to by Beneficiary.

5.3 Beneficiary's Right to Perform Under Leases. Should Grantor fail to perform, comply with or discharge any obligations of Grantor under any Lease or should Beneficiary become aware of or be notified by any tenant under any Lease of a failure on the part of Grantor to so perform, comply with or discharge its obligations under said Lease, Beneficiary may, but shall not be obligated to, and without further demand upon Grantor, and without waiving or releasing Grantor from any obligation in this Deed of Trust contained, remedy such failure, and Grantor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with interest at the Interest Rate in effect from time to time. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve Grantor from any default hereunder.

#### ARTICLE 6 RIGHTS OF BENEFICIARY

6.1 Right to Cure Default. If Grantor shall fail to comply with any of the covenants or obligations of this Deed of Trust, Beneficiary may, but shall not be obligated to, without further notice to Grantor and without waiving or releasing Grantor from any obligation in this Deed of Trust contained, remedy such failure, and Grantor agrees to repay upon demand all sums incurred by Beneficiary in remedying any such failure together with interest at the Interest Rate in effect from time to time. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve Grantor from any failure hereunder.

6.2 No Claim Against Beneficiary. Nothing contained in this Deed of Trust shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Grantor or any other party in interest with Grantor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against Beneficiary in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.

6.3 Inspection. Beneficiary or its authorized representatives may enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same; provided, however, Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation (except for damage to persons or property caused by the gross negligence or willful misconduct of Beneficiary) for making or not making any such inspections.

6.4 Waivers; Releases; Resort to Other Security, Etc. Without affecting the liability of any party liable for payment of any Indebtedness Secured Hereby or performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time, and without notice to or the consent of Grantor or any other party in interest with the Premises or the Note:

- (a) release any person liable for payment of all or any part of the Indebtedness Secured Hereby or for performance of any obligation herein;
- (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness Secured Hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) accept any additional security;
- (d) release or otherwise deal with any of the Premises, whether real or personal property, including, without limitation, making partial releases of the Premises; or
- (e) resort to any security agreements, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

#### ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. It shall be an "Event of Default" under this Deed of Trust upon the happening of any of the following; provided, that, an "Event of Default" shall not occur hereunder until the expiration of all applicable notice, grace and cure periods, if any, expressly set forth herein with respect to such event:

- (a) any event designated as an "Event of Default" occurs under the Loan Agreement, the Note or any other Loan Document (other than this Deed of Trust); or
- (b) an Event of Default occurs pursuant to Sections 1.8, 1.13 or 7.7; or
- (c) Grantor fails to comply with or perform any agreement, term, condition or covenant required to be performed or observed by Grantor under the terms of this Deed of Trust, the Loan Agreement or any other Loan Document, other than a default described in Section 7.1(a) or (b) above, and such default continues unremedied for a period of thirty (30) days after notice from Beneficiary to Grantor thereof or such longer period of time as may be necessary to remedy the same not to exceed an additional sixty (60) days, provided that Grantor promptly commences and diligently pursues such cure until completion.

7.2 Beneficiary's Remedies upon Default. If an Event of Default shall occur Beneficiary may exercise one or more of the following remedies:

- (a) declare the entire unpaid principal balance of the Note together with all other Indebtedness Secured Hereby to be immediately due and payable and thereupon all such unpaid principal balance of the Note together with all accrued interest thereon at the then applicable Interest Rate and all other Indebtedness Secured Hereby shall be and become immediately due and payable;
- (b) exercise any or all remedies specified herein and/or in the other Loan Documents (including, without limitation, the remedies provided in this Article 7) and any remedies which Beneficiary may have therefor at law, in equity or under statute;
- (c) cure the Event of Default on behalf of Grantor, and, in doing so, enter upon the Premises, and expend such sums as it may deem desirable, including, without limitation, attorneys' fees, all of which shall be deemed to be advances hereunder, even though causing the Loan to exceed the face amount of the Note, shall bear interest at the Default Rate and shall be payable to Beneficiary on demand;
- (d) declare an Event of Default under any agreement to which Beneficiary and Grantor are parties, whether or not such agreement concerns the Loan transaction contemplated by this Deed of Trust, and may effectuate any remedies provided for in such agreement;
- (e) exercise any or all of the remedies of a secured party under the Code with respect to any portion of the Premises which is personal property;
- (f) obtain a deficiency judgment if the net sale proceeds of any sale of the Property under the power of sale granted by this Deed of Trust are insufficient to pay in full all of the Indebtedness Secured Hereby; and/or

- (g) set off any sum due to or incurred by Beneficiary against all deposits and credits of Grantor with, and any and all claims of Grantor against Beneficiary.

7.3 Right to Foreclose. If an Event of Default shall occur:

- (a) Beneficiary may, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to enforce payment of the Indebtedness Secured Hereby or the performance of any other term hereof or any other right and Grantor hereby authorizes and fully empowers Beneficiary to foreclose this Deed of Trust by judicial proceedings or by advertisement with power of sale and grants to Beneficiary full authority to sell the Premises at public auction and convey title to the Premises to the purchaser, either in one parcel or separate lots and parcels (the Premises being a single tract), all in accordance with and in the manner prescribed by the laws of the State of Washington, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and all other Indebtedness Secured Hereby together with all such sums of money as Beneficiary shall have expended or advanced pursuant to this Deed of Trust or pursuant to statute together with interest thereon at the Interest Rate then in effect and all costs and expenses of such foreclosure, including, without limitation, lawful attorneys' fees, with the balance, if any, to be paid to the persons entitled thereto by the laws of the State of Washington. In any such proceeding Beneficiary may apply all or any portion of the Indebtedness Secured Hereby as a credit to the amount of the purchase price. In the event that any provision in this Deed of Trust shall be inconsistent with any provision of applicable Washington foreclosure law, the provisions of applicable law shall take precedence over the inconsistent provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with applicable law.
- (b) Beneficiary may, by and through the Trustee, or otherwise, to the fullest extent permitted under applicable law, sell or offer for sale the Premises in such portions, order and parcels as Beneficiary may reasonably determine, with or without having first taken possession of the Premises, to the highest bidder for cash at public auction. If Beneficiary invokes the power of sale, Beneficiary will give written notice to Trustee of the occurrence of the Event of Default and of Beneficiary's election to cause the Premises to be sold. Trustee and Beneficiary will give such notices as Washington law may require to Grantor and to all other persons entitled to receive notice under Washington law. After the lapse of such time as may be required by Washington law, Trustee will sell the Premises in accordance with the provisions of the Washington Deed of Trust Act. Trustee may sell the Premises at the time and place and under the terms designated in

the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of the Premises in accordance with the provisions of the Washington Deed of Trust Act. If there is no statute in force at the time of the sale governing sales of Washington real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Washington real property under powers of sale conferred by deeds of trust. The Trustee shall execute a conveyance to the purchaser in fee simple and deliver possession to the purchaser, which Grantor warrants shall be given without obstruction, hindrance or delay. The Trustee may sell all or any portion of the Premises, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple. The sale or sales by Trustee of less than the whole of the Premises shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Premises shall be sold; and if the proceeds of such sale or sales of less than the whole of the Premises shall be less than the aggregate of the Indebtedness Secured Hereby and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Premises; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Premises, but Beneficiary shall have the right at its sole election, to request the Trustee to sell less than the whole of the Premises. Beneficiary may bid and become the purchaser of all or any part of the Premises at any such sale, and the amount of Beneficiary's successful bid may be credited on the Indebtedness Secured Hereby. The Trustee shall be entitled to receive reasonable fees and expenses from such sale not to exceed the amount permitted by applicable law.

- (c) Beneficiary will have the right, at its option, to foreclose or cause the nonjudicial foreclosure of this Deed of Trust, subject to the rights of any tenant or tenants of the Premises.

7.4 Waiver of Appraisement, Homestead, Redemption. Grantor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "moratorium law" or any homestead law now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or pursuant to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the extent permitted by law, Grantor hereby specifically waives all rights of redemption from sale pursuant to any order or decree of foreclosure of this Deed of Trust on its own behalf.

7.5 Receiver. If an Event of Default shall occur, Beneficiary shall be entitled as a matter of right without notice and without giving bond and without regard to the solvency or insolvency of Grantor, or waste of the Premises or adequacy of the security for the Indebtedness Secured Hereby, and, whether or not proceedings have been brought to enforce this Deed of Trust, to have a general receiver or a custodial receiver appointed for the Premises. Such receiver shall, in addition to all the rights and powers granted to it under the terms of its receivership, shall have all the rights and powers granted Beneficiary hereunder, including, without limitation, the right to the possession of the Premises, to collect the Rents therefrom and otherwise deal with and manage the Premises and apply the same to the payment of taxes, assessments, insurance premiums and expenditures for the management, repair and upkeep of the Premises, to the performance of landlord's obligations under any Leases and to the Indebtedness Secured Hereby and as further provided in any Assignment of Leases and Rents executed by Grantor to Beneficiary (whether contained in this Deed of Trust or in a separate instrument).

7.6 Rights under Uniform Commercial Code. In addition to the rights available to a mortgagee of real property, Beneficiary shall also have all the rights, remedies and recourse available to a secured party under the Code, including, without limitation, the right to proceed under the provisions of the Code governing default as to any property which is subject to the security interest created by this Deed of Trust or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

7.7 Due on Sale. In the event of a Transfer (other than a Permitted Transfer) without the written consent of Beneficiary being first obtained, whether voluntarily, involuntarily, or by operation of law, then at the sole option of Beneficiary, Beneficiary may declare that an Event of Default has occurred and may declare the entire unpaid principal balance together with accrued interest, due and payable in full and call for payment of the same in full at once. Any such payment shall be subject to the requirements, if any, in the Note providing for the payment of a prepayment premium in the event of a non-permitted Transfer. A consent by Beneficiary as to any one Transfer shall not be deemed to be a waiver of the right to require consent to a future Transfer. As used herein, the term "Transfer" shall include any sale, grant, pledge, assignment, mortgage, deed of trust, encumbrance, security interest, consensual lien, hypothecation, lease (other than bona fide third party leases for actual occupancy by an unrelated, unaffiliated tenant), transfer or divesture, or otherwise, of or an interest in (i) the Premises or (ii) Grantor or (iii) any underlying ownership interest, either directly or indirectly, in Grantor or (iv) any entity controlling, managing or in control of Grantor. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises or Grantor, whether or not of record and whether or not for consideration, shall be deemed a Transfer.

7.8 Rights Cumulative. Each right, power or remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Beneficiary, at law or in equity, or under any other agreements, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Beneficiary in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or

the right of Beneficiary to resort thereto at a later date or be construed to be a waiver of any Default or Event of Default.

7.9 Right to Discontinue Proceedings. In the event Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under this Deed of Trust and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and in such event Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness Secured Hereby. This Deed of Trust, the Premises and all rights, remedies and recourses of Beneficiary shall continue as if the same had not been invoked.

7.10 Setoff. In addition to the other remedies set forth herein and in the other Loan Documents, Grantor hereby irrevocably authorizes Beneficiary, upon an Event of Default, to set off any sum due to or incurred by Beneficiary against all deposits and credits of Grantor with, and any and all claims of Grantor against, Beneficiary. Such right shall exist whether or not Beneficiary shall have made any demand hereunder or under any other Loan Document, whether or not said sums, or any part thereof, or deposits and credits held for the account of Grantor is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to Beneficiary. Beneficiary agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Grantor of its exercise of such setoff right; provided, however, that the failure of Beneficiary to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing herein shall be deemed a waiver or prohibition of or restriction on Beneficiary to all rights of banker's lien, setoff and counterclaim available pursuant to law.

ARTICLE 8  
RESERVED

ARTICLE 9  
SPECIAL COVENANTS

9.1 Single Use. The Premises shall be used only for multifamily residential and live/work purposes and other uses incidental thereto, and for no other use without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole and absolute discretion.

9.2 Single Purpose Entity. Grantor covenants and agrees that it has not and shall not:

- (a) engage in any business or activity other than the acquisition, construction, ownership, operation and maintenance of the Premises and activities incidental thereto;
- (b) acquire or own any material asset other than the Premises and such incidental personal property as may be necessary for the operation of the Premises;
- (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or

substantially all of its assets or change its legal structure, without in each case Beneficiary's consent;

- (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Beneficiary, amend, modify, terminate or fail to comply with the provisions of Grantor's articles of organization, operating agreement or similar organizational documents, as the case may be, which relate to Grantor's status as a single purpose entity;
- (e) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Beneficiary;
- (f) commingle its assets with the assets of any of its members or affiliates, or of any other person or entity;
- (g) incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Loan and unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Premises in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the principal amount of the Loan;
- (h) fail to pay its debts and liabilities from its own assets;
- (i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members and affiliates of Grantor, the affiliates of a member of Grantor and any other person or entity;
- (j) enter into any contract or agreement with any member or affiliate of Grantor, any Guarantor, or any member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and similar to those that would be available on an arms-length basis with third parties other than any member or affiliate of Grantor or Guarantor, or any member, principal or affiliate thereof;
- (k) seek dissolution or winding up, in whole or in part;
- (l) fail to correct any known misunderstandings regarding the separate identity of Grantor;

- (m) hold itself out to be responsible (or pledge its assets as security) for the debts of another person;
- (n) make any loans or advances to any third party, including, without limitation, loans or advances to any member or affiliate of Grantor, or any member, principal or affiliate thereof;
- (o) fail to file its own tax returns or to use separate stationary, invoices and checks;
- (p) agree to, enter into or consummate any transaction which would render Grantor unable to furnish a certification or other evidence of compliance with the covenants referred to in Section 9.2(b);
- (q) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Grantor is responsible for the debts of any third party (including, without limitation, any member, shareholders or affiliate of Grantor, or any shareholders, principal or affiliate thereof);
- (r) fail to allocate fairly and reasonably among Grantor and any third party (including, without limitation, Grantor) any overhead for shared office space;
- (s) fail to pay the salaries of its own employees (if any) and maintain a sufficient number of employees (if any) for its contemplated business operations;
- (t) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (u) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors, without the unanimous written consent of Grantor's members; or
- (v) share any common logo with or hold itself out as or be considered as a department or division of (i) any member or affiliate of Grantor, or (ii) any other person or entity.

ARTICLE 10  
MISCELLANEOUS

10.1 Release of Deed of Trust. When all Indebtedness Secured Hereby has been paid, this Deed of Trust and all assignments herein contained shall be void and this Deed of Trust shall be released by Beneficiary at the cost and expense of Grantor, otherwise to remain in full force and effect.

10.2 Choice of Law. Notwithstanding the place of execution of this instrument, the parties to this instrument have contracted for Washington law to govern this instrument and it is agreed that this instrument is made pursuant to and shall be construed and governed by the laws of the State of Washington without regard to the principles of conflicts of law. THE LAW OF THE STATE OF WASHINGTON SHALL APPLY TO THE GRANT OF THE DEED OF TRUST, ASSIGNMENTS AND SECURITY INTERESTS SET FORTH HEREIN AND THE EXERCISE OF REMEDIES BY BENEFICIARY UNDER THIS DEED OF TRUST THAT PERTAIN TO OR CONCERN THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE APPOINTMENT OF A RECEIVER OR THE FORECLOSURE OF THE SECURITY INTEREST AND LIENS GRANTED HEREIN, WHETHER JUDICIALLY OR PURSUANT TO THE EXERCISE OF THE POWER OF SALE GRANTED HEREIN.

10.3 Successors and Assigns. This Deed of Trust and each and every covenant, agreement and other provision hereof shall be binding upon Grantor and its successors and assigns including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein, shall run with the land and shall inure to the benefit of Beneficiary and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to include the heirs, representatives, administrators and executors of any natural person who is or becomes a party to this Deed of Trust. In the event that the ownership of the Premises becomes vested in a person or persons other than Grantor, Beneficiary shall not have any obligation to deal with such successor or successors in interest unless such transfer is permitted by this Deed of Trust and then only upon being notified in writing of such change of ownership. Upon such notification, Beneficiary may thereafter deal with such successor in place of Grantor without any obligation to thereafter deal with Grantor and without waiving any liability of Grantor hereunder, under the Note or under any of the other Loan Documents. No change of ownership shall in any way operate to release or discharge the liability of Grantor hereunder unless such release or discharge is expressly agreed to in writing by Beneficiary.

10.4 Unenforceability of Certain Clauses. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

10.5 Captions and Headings. The captions and headings of the various sections of this Deed of Trust are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

10.6 Notices. Any notices and other communications permitted or required by the provisions of this Deed of Trust shall be in writing and shall be deemed to have been properly given or served by (i) personal delivery, (ii) depositing the same with the United States Postal

Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) depositing the same with a reputable private courier or overnight delivery service, in each case addressed as hereinafter provided. Each such notice shall be effective (a) immediately upon personal delivery, (b) three (3) days after being deposited in the U.S. Mail, or (c) one (1) business day after delivery to such courier or delivery service. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time and at any time during the term of this Deed of Trust to change its address and shall have the right to specify as its address and shall have the right to specify as its address any other address within the United States of America. Without limitation of the foregoing, at Beneficiary's option, any written notice of default given to Grantor may be given in the form of a statutory notice of default under the Washington Deed of Trust Act or any other form as Beneficiary may elect.

Each notice to Beneficiary shall be addressed as follows:

Colliers Funding LLC  
90 South Seventh Street  
Suite 4300  
Minneapolis, MN 55402  
Attention: Loan Servicing Department

With a copy to:

Fabyanske, Westra, Hart & Thomson, P.A.  
333 South Seventh Street  
Suite 2600  
Minneapolis, MN 55402  
Attention: Rory O. Duggan, Esq.

Each notice to Grantor shall be addressed as follows:

Hodgin Corner, LLC  
c/o The RJ Group  
222 Grand Avenue, Suite C  
Bellingham, WA 98225  
Attention: Mollie Janicki

With a copy to:

Skagit Law Group PLLC  
P.O. Box 336  
227 Freeway Drive, Suite B

Mount Vernon, WA 98273  
Attention: Craig E. Cammock, Esq.

Each notice to Trustee shall be addressed as follows:

Chicago Title Insurance Company  
425 Commercial Street  
Mt Vernon, WA 98273

10.7 Savings Clause. It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in the Note, this Deed of Trust and any other Loan Document. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note, this Deed of Trust or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness Secured Hereby, or if Beneficiary's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Grantor results in Grantor having paid any interest in excess of that permitted by applicable law, then it is Grantor's and Beneficiary's express intent that all excess amounts theretofore collected by Beneficiary shall be credited on the principal balance of the Note and all other Indebtedness Secured Hereby (or, if the Note and all other Indebtedness Secured Hereby have been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note, this Deed of Trust and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the Indebtedness Secured Hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness Secured Hereby until payment in full so that the rate or amount of interest on account of the Indebtedness Secured Hereby does not exceed the maximum lawful rate from time to time in effect and applicable to the Indebtedness Secured Hereby for so long as the Indebtedness Secured Hereby is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

10.8 Commercial Loan. Grantor certifies and agrees that the Premises is not, and will not be, used principally for agricultural purposes, that the proceeds of the Note will be not used for consumer, personal, family or household purposes and that the principal obligation secured hereby constitutes a "commercial loan" within the meaning of RCW 61.24.

10.9 Consent to Jurisdiction. Grantor submits and consents to personal jurisdiction of the courts of the county where the Premises is located and the courts of the United States of America located in such state for the enforcement of this instrument and waives any and all

personal rights under the laws of any state or the United States of America to object to jurisdiction in such courts. Litigation may be commenced in the state court of general jurisdiction for such counties or in the United States District Court located in such state, at the election of Beneficiary. Nothing contained herein shall prevent Beneficiary from bringing any action in any other state or jurisdiction against any other person or exercising any rights against any security given to Beneficiary or against Grantor or Guarantor personally, or against any property of Grantor in any other state or jurisdiction. Commencement of any such action or proceeding in any other state or jurisdiction shall not constitute a waiver of consent to jurisdiction of or the submission made by Grantor to personal jurisdiction in any of such courts. In the event an action is commenced in another jurisdiction or venue under any tort or contract theory arising directly or indirectly from the relationship created by this Deed of Trust, Beneficiary, at its option, shall be entitled to have the case transferred to one of the jurisdictions and venues above described or any other jurisdiction, or if such transfer cannot be accomplished under applicable law, to have such case dismissed without prejudice.

10.10 Waiver of Jury Trial. GRANTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH ANY PARTIES TO THIS DEED OF TRUST ARE INVOLVED DIRECTLY OR INDIRECTLY AND ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS DEED OF TRUST OR THE RELATIONSHIP ESTABLISHED HEREUNDER, AND WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS DEED OF TRUST.

10.11 Indemnity. Grantor agrees to indemnify, protect, hold harmless and defend Beneficiary from and against any and all losses, liabilities, claims (including, without limitation, attorneys' fees, disbursements and court costs prior to trial, at trial and on appeal) which may be imposed on, incurred or paid by, or asserted against Beneficiary by reason or on account of, or in connection with, (i) any misconduct of Grantor or any Default or Event of Default hereunder, (ii) the construction, reconstruction or alteration of the Premises, (iii) any negligence of Grantor or any negligence or willful misconduct of any lessee of the Premises or any part thereof, or any of their respective agents, contractors, subcontractors, servants, directors, officers, employees, licenses or invitees, or (iv) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the gross negligence or willful misconduct of Beneficiary or its agents, contractors, subcontractors, servants, directors, officers, employees, licenses or invitees. Any amount payable to Beneficiary under this Section 10.11 shall be due and payable upon demand therefor and receipt by Grantor of a statement from Beneficiary setting forth in reasonable detail the amount claimed and the basis therefor and upon reasonable opportunity for Grantor to verify and/or challenge same. Grantor's obligations under this Section 10.11 shall survive the repayment or any other satisfaction of the Note and shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought against Beneficiary which is subject to the indemnity set forth in this Section 10.11, Grantor shall resist or defend against the same, in its own name or, if necessary, in the name of Beneficiary, by attorneys for Grantor's insurance carrier (if the same is covered by insurance) approved by Beneficiary (which approval shall not unreasonably be withheld) or otherwise by attorneys retained by Grantor and approved by Beneficiary (which approval shall not be unreasonably withheld). If Beneficiary has approved

of the attorneys provided by Grantor or Grantor's attorney and nevertheless elects to retain separate counsel, Beneficiary shall do so at its sole cost and expense. GRANTOR ACKNOWLEDGES AND CONFIRMS THAT CERTAIN PROVISIONS OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS IMPOSE UPON GRANTOR CERTAIN OBLIGATIONS AND INDEMNITIES FOR CLAIMS RESULTING FROM THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF BENEFICIARY OR THE OTHER INDEMNIFIED PARTIES.

10.12 Litigation. Grantor, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, without limitation, this Deed of Trust or the Premises. If any action or proceeding relating to or affecting the Note, this Deed of Trust, the Loan Agreement or the Premises is commenced or threatened, to which action or proceeding Beneficiary is made a party, or in which it becomes necessary or desirable, in Beneficiary's reasonable opinion, to defend or uphold, or to consider defending or upholding, the lien of this Deed of Trust, or to protect the Premises or any part thereof, or to exercise, or to obtain the right to exercise, any of Beneficiary's rights, powers and remedies hereunder, including, without limitation, any foreclosure or commencement of foreclosure proceedings, probate proceedings and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Beneficiary otherwise incurs costs or expenses, all sums paid by Beneficiary in order to determine the merits thereof, to establish or defend the rights and liens of this Deed of Trust, to protect the Premises or any part thereof and to exercise, or to obtain the right to exercise, any of Beneficiary's rights, powers and remedies hereunder, and/or otherwise incurred by Beneficiary in connection therewith (including, without limitation, attorneys' fees and costs and allowances prior to trial, at trial and on appeal) and whether suit be brought or not, and whether or not Beneficiary prevails therein, shall be paid, upon demand, to Beneficiary by Grantor, together with interest thereon at the Interest Rate from the date incurred, and any such sum or sums shall be secured hereby.

10.13 Acts of Beneficiary. In the event Beneficiary (a) grants any extensions of time or forbearance with respect to the payment of any Indebtedness Secured Hereby; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right, power or remedy granted herein, in the Note, in the Loan Agreement or in any other Loan Documents; (d) grants any release, with or without consideration, of the whole or any part of the security for the payment of the Indebtedness Secured Hereby or the release of any person, party or entity liable for payment of said Indebtedness Secured Hereby; and/or (e) amends or modifies in any respect any of the terms and provisions hereof, of the Note (including, without limitation, substitution of another note), of the Loan Agreement or of any other Loan Document; then, and in any such event, such act or omission to act shall not release Grantor under any covenant of this Deed of Trust, of the Note, of the Loan Agreement or of any other Loan Document, nor preclude Beneficiary from exercising any right, power or privilege herein or therein granted or intended to be granted, and shall not in any way impair or affect the lien or priority of this Deed of Trust. In the event any additional real property, improvements, leases, fixtures or personal property not herein specifically identified shall be or become a part of the Premises, then this Deed of Trust shall immediately attach to and constitute a lien against or security interest in such additional items, as appropriate, without further act or deed of either party hereto.

10.14 Time of the Essence. Grantor agrees that where, by the terms hereof or of the Note, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, that time is of the essence.

10.15 Future Advances; Maximum Principal Amount. At all times, regardless of whether any Loan Proceeds have been disbursed, this Deed of Trust secures as part of the Indebtedness Secured Hereby the payment of any and all loan finance charges, commissions, service charges, liquidated damages, attorneys' fees, expenses and future advances due to or incurred by Beneficiary in connection with the Indebtedness Secured Hereby, all in accordance with the Loan Documents. All future advances shall be a lien on the Premises at and from the time of the recording of this Deed of Trust in accordance with applicable law. All persons who may have or acquire an interest in the Premises are hereby deemed to have notice of the terms of the Indebtedness Secured Hereby and that this Deed of Trust secures future advances, and to have notice, if provided therein, that the rate of interest on the Note or any other Indebtedness Secured Hereby may vary from time to time. Absent default under the terms of the Indebtedness Secured Hereby, all advances thereunder by Beneficiary are obligatory and are secured by this Deed of Trust. All such obligatory advances will have the same priority as the funds initially advanced thereunder.

10.16 Trustee.

- (a) Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting under this Deed of Trust or shall fail or refuse to act in accordance with this Deed of Trust when requested by Beneficiary or if for any reason and without cause Beneficiary shall prefer to appoint a successor trustee to act instead of the original Trustee named in this Deed of Trust or any prior successor or successor trustee, Beneficiary shall have full power to appoint a successor trustee and, if preferred, several successor trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Deed of Trust. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Beneficiary (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by Beneficiary.
- (b) Any successor Trustee appointed pursuant to this Section 10.16 shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Deed of Trust; but, nevertheless, upon the written request of Beneficiary or such successor Trustee; the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the Premises and monies held by the Trustee ceasing to act to the successor Trustee.

- (c) Trustee may authorize one (1) or more parties to act on Trustee's behalf to perform the ministerial functions required of Trustee under this Deed of Trust, including the transmittal and posting of any notices.

10.17 Conflict with Loan Agreement. In the event of any conflict between the terms and conditions hereof and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall control.

10.18 Mortgage Alternative. It is the express intent of Grantor and Beneficiary that this instrument constitute and be effective as a deed of trust under Revised Code of Washington chapter 61.24 (the "Deed of Trust Act"). Notwithstanding the express intent of Grantor and Beneficiary that this instrument constitute and be effective as a deed of trust under the Deed of Trust Act, should a court of competent jurisdiction determine that this instrument does not constitute or is not effective as such a deed of trust, then this instrument shall be deemed to be a mortgage under Revised Code of Washington chapter 61.12 (the "Mortgage Statute"). In furtherance of the foregoing, Grantor, as mortgagor, hereby mortgages to Beneficiary, as mortgagee, the Premises to secure the prompt payment and performance of the Indebtedness Secured Hereby, subject to the terms and provisions of this instrument and the Mortgage Statute and Beneficiary will be entitled to exercise the rights and remedies afforded to Trustee in this instrument. Subject to the foregoing, nothing in this Section 10.18 is intended to have any effect on the characterization, or limit the enforceability, of this instrument as a deed of trust under the Deed of Trust Act or the rights and remedies of Trustee or Beneficiary hereunder or thereunder.

10.19 Beneficiary. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any successor or assignee of Beneficiary and any future holders, including pledges, of the Note.

10.20 Release. If Grantor shall well and truly pay or cause to be paid to Beneficiary the Indebtedness Secured Hereby then this Deed of Trust shall cease and be void and the Premises hereinbefore conveyed shall be released and reconveyed to Grantor at the cost of Grantor, otherwise to remain in full force and effect. To the extent that Beneficiary receives any payment on account of the Indebtedness Secured Hereby and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment(s) received, the indebtedness or part thereof intended to be satisfied and any and all liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Grantor and theretofore created and/or existing in favor of Beneficiary as security for the payment of such Indebtedness Secured Hereby shall be revived and continue in full force and effect, as if such payment had not been received by Beneficiary and applied on account of the Indebtedness Secured Hereby.

10.21 Expenses During Redemption Period. If this Deed of Trust is foreclosed as a mortgage and the Premises sold at a foreclosure sale, then during any redemption period allowed, the purchaser may make such repairs or alterations on the Premises as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditures the Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

10.22 Certain Obligations Unsecured. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure any of the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Environmental Indemnity or the Guaranty or (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Premises of Hazardous Substances and are the same or have the same effect as any of the obligations evidenced by or arising under the Environmental Indemnity. Any Event of Default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

10.23 Removal of Liens. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary, Grantor will have satisfied its obligation to remove liens by complying with the requirements of RCW 60.04.161 (or such successor statute) in addition to either filing of a bond or otherwise in a manner satisfactory to Beneficiary in its sole and absolute discretion.

10.24 Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

*[Remainder of Page Intentionally Left Blank]*



*Exhibit A*

*Legal Description*

PARCEL G, AMENDED GATEWAY BINDING SITE PLAN, APPROVED JANUARY 28, 2021, AND RECORDED MARCH 9, 2021, UNDER AUDITOR'S FILE NO. 202103090001, BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

Deed of Trust