

**AFTER RECORDING MAIL TO:**

Helsell Fetterman LLP  
c/o Scott E. Collins  
1001 Fourth Avenue, Suite 4200  
Seattle, Washington 98154

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**Document Title(s): (or transactions contained therein)**

DEED OF TRUST

**Document Reference(s):**

N/A

**NCS-1151524  
1st AM (25)**

**Grantor:**

Gold Coast 2700 Properties 2, LLC, a Washington limited liability company

**Grantee:**

First American Title Insurance Company, as trustee, for the benefit of The Northern Trust Company,  
an Illinois banking corporation, in its capacity as beneficiary

**Abbreviated Legal Description:**

Situated in the County of Skagit, State of Washington:

Ptn. NE SE, 18-34-4E (aka Ptn. Lot 3, City of Mount Vernon BSP No. MV-1-93, AF# 9309300143)

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

Parcel No. P104613/8006-000-003-0002

APN: P104613

**DEED OF TRUST**

From

**GOLD COAST 2700 PROPERTIES 2, LLC,**  
a Washington limited liability company, as borrower

to

**FIRST AMERICAN TITLE INSURANCE COMPANY,**  
as trustee,

for the benefit of

**THE NORTHERN TRUST COMPANY,**  
an Illinois banking corporation, as lender.

Effective as of November 2, 2022

**DEED OF TRUST**

This Deed of Trust (this "**Deed of Trust**"), effective as of November 2, 2022, from GOLD COAST 2700 PROPERTIES 2, LLC, a Washington limited liability company, as grantor ("**Borrower**"), whose address is 6947 Coal Creek Parkway SE, Suite 212, Newcastle, Washington 98059, to FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee ("**Trustee**"), whose address is 920 Fifth Avenue, Suite 1200, Seattle Washington 98104, for the benefit of THE NORTHERN TRUST COMPANY, an Illinois banking corporation, as beneficiary ("**Lender**"), whose address is 1301 Second Avenue, Suite 2600, Seattle, Washington 98101, is as follows:

WITNESSETH

THAT FOR THE PURPOSES OF SECURING:

A. A non-revolving term loan ("**Loan**") by the Lender to the Borrower in the principal amount of One Million Six Hundred Thousand and 00/100 U.S. Dollars (\$1,600,000.00), together with interest and other charges thereon as evidenced by that certain Term Note (such term note, together with any and all amendments, substitutions, severances, renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "**Note**") of even date with this Deed of Trust, made by the Borrower to the order of the Lender in like amount;

B. The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in that certain Loan and Security Agreement by and between the Borrower and the Lender (such agreement, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "**Loan Agreement**") dated of even date with this Deed of Trust, and in any other agreements, documents or instruments now or hereafter evidencing, guarantying, securing or otherwise relating to the indebtedness evidenced by the Note, whether executed or delivered by the Borrower or by any guarantor or pledgor with respect to any obligation of the Borrower (as "**Indemnitor**"), as defined herein, under the "**Loan Documents**," as defined herein, or jointly and severally, and the payment of all other sums covenanted in the Loan Documents to be paid;

C. Any and all additional advances made by the Lender to protect or preserve the Property, as defined herein, or the lien or security interest created hereby on the Property, or for taxes and other charges or insurance premiums as hereinafter provided or for performance of any of the Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower named above remains the owner of the Property at the time of such advances), and any and all costs and expenses incurred by the Lender hereunder in performing the obligations required to be performed by the Borrower or otherwise incurred by the Lender pursuant to the terms of this Deed of Trust, together with interest and other charges on each such advance, cost or expense (which interest shall accrue at the default interest rate, as defined in the Note, from the date such amounts are advanced or paid by Lender until the date repaid by the Borrower); and

D. Any and all other indebtedness now owing or which may hereafter be owing by the Borrower to the Lender in connection with the Loan, the Loan Documents and/or the Property, including, without limitation, all prepayment fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

**Section 1. Definitions.**

The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Loan Agreement and Uniform Commercial Code:

**"Beneficiary"** means The Northern Trust Company, an Illinois banking corporation, and its successors and assigns, in its joint capacity as the Lender.

**"Borrower"** means Gold Coast 2700 Properties 2, LLC, a Washington limited liability company, and includes all signers and makers signing the Note and all their successors and assigns.

**"Cure Period"** means the cure period as set forth in Subsection 18.14 of this Deed of Trust.

**"Deed of Trust"** means this Deed of Trust, dated November 2, 2022, from the Borrower to the Trustee for the benefit of the Beneficiary and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**"Default"** means the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Deed of Trust or such other Loan Documents as the case may be.

**"Event of Default"** means any of the Events of Default set forth in Section 18 of this Deed of Trust.

**"Grantor"** means Gold Coast 2700 Properties 2, LLC, a Washington limited liability company.

**"Guaranty"** means the Guaranty from the Guarantors, endorser, surety, or accommodation party to the Lender, including without limitation a guaranty of all or part of the Note.

**"Hazardous Material"** means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

**"Hazardous Material Laws"** means any law, regulation, order or decree relating to environmental conditions and industrial hygiene, including without limitation the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and specifically including all laws governing substances identified as petroleum products under CERCLA, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Washington Model Toxics Control Act ("MTCA"), the Washington Hazardous Waste Management Act ("HWMA"), the Washington Water Pollution Act, the Washington Clean Air Act and all similar federal, state and

local environmental statutes and ordinances and the regulations, orders, and decrees now or hereafter promulgated thereunder.

**"Improvements"** means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**"Indebtedness"** means the indebtedness evidenced by the Note, the Loan, and all other Loan Documents, including all principal and interest, together with all other indebtedness and costs and expenses for which the Borrower is responsible under this Deed of Trust or under any of the other Loan Documents. In addition, the word "Indebtedness" includes all other obligations, debts and liabilities, plus interest thereon, of the Borrower to the Lender, as well as all claims by the Lender against the Borrower whether existing now or later; whether they are voluntary or involuntary, due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated; whether the Borrower may be liable individually or jointly with others; whether the Borrower may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**"Leases"** means all present and future leases (including without limitation, oil, gas, and mineral leases), subleases, licenses, concessions, and occupancy agreements of all or any part of the Real Property or the Improvements.

**"Lender"** means The Northern Trust Company, an Illinois banking corporation, its successors and assigns.

**"Loan"** means the loan to be made by the Lender to the Borrower under and in accordance with the terms and conditions of the Loan Agreement.

**"Loan Agreement"** means the Loan and Security Agreement dated of even date herewith, by and between Borrower and Lender.

**"Loan Documents"** means this Deed of Trust, the Loan Agreement, the Note, and any and all other promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; provided, that the environmental indemnity agreement(s) are not "Loan Documents" and are not secured by this Deed of Trust.

**"Note"** means the Term Note, dated of even date herewith, in the original principal amount of One Million and Six Hundred Thousand and 00/100 U.S. Dollars (\$1,600,000.00) from the Borrower to the Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the term note or agreement.

**"Personal Property"** means all equipment, fixtures, and other articles of personal property now or hereafter owned by the Borrower, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**"Property"** means collectively the Real Property, the Improvements, and the Personal Property.

**"Real Property"** means the real property, interests and rights, as further described in Section 2 of this Deed of Trust.

**"Rents and Profits"** means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Real Property or Improvements.

**"Trustee"** means First American Title Insurance Company, whose address is 920 Fifth Avenue, Suite 1200, Seattle, Washington 98104, and any substitute or successor trustees.

## **Section 2. Conveyance and Grant.**

For valuable consideration, the Borrower conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of the Lender as Beneficiary, all of the Borrower's right, title, and interest in and to the following described Real Property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, ("**Property**") located in Skagit County, State of Washington:

The Property is situated in the County of Skagit, State of Washington, and is described as follows:

LOT 3, CITY OF MOUNT VERNON BINDING SITE PLAN NO. MV-1-93, ENTITLED SKAGIT VALLEY SQUARE, APPROVED SEPTEMBER 29, 1993, RECORDED SEPTEMBER 30, 1993 IN VOLUME 10 OF SHORT PLATS, PAGES 240-246, UNDER AUDITOR'S FILE NO. 9309300143 AND BEING A PORTION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 18, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.,

EXCEPT THAT PORTION CONVEYED TO THE CITY OF MOUNT VERNON, A MUNICIPAL CORPORATION BY DEED RECORDED APRIL 10, 2008 AS AUDITOR'S FILE NO. 200804100131.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON

The Real Property or its address is commonly known as 324 East College Way, Mount Vernon, Washington 98273.

The Borrower hereby assigns as further security to the Lender as Beneficiary, all of the Borrower's right, title, and interest in and to all Leases and Rents and Profits of the Real Property. This assignment is recorded in accordance with RCW 65.08.070; the lien created by this assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust. The Lender grants to the Borrower a license to collect the Rents and Profits, which license may be revoked at the Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE LOAN DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

## **Section 3. Covenants of Borrower.**

Until all Indebtedness and other obligations of the Borrower under or in connection with the

Loan, the Loan Documents and/or the Property are paid and fulfilled in full, the Borrower covenants and agrees that it shall comply with the following covenants:

3.1. Compliance with Applicable Laws and Regulations. All of the Improvements on the Real Property and the use of the Property by the Borrower materially comply with, and shall remain in material compliance with, all applicable statutes, rules, regulations and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including all applicable health, fire and building codes, and all applicable statutes, rules and regulations pertaining to requirements for equal opportunity anti-discrimination, fair housing, environmental protection, zoning and land use (collectively, the "**Applicable Laws**"). There is no evidence of any illegal activities relating to controlled substances on the Property. All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property for the use currently being made thereof have been obtained and are in full force and effect. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

3.2. Title. The Borrower has good and marketable fee simple title to the Property, subject only to those matters expressly listed as exceptions to title or subordinate matters in the title insurance policy accepted by the Lender in connection with this Deed of Trust ("**Title Insurance Policy**"), excepting therefrom all preprinted and/or standard exceptions ("**Permitted Exceptions**"). The possession of the Property has been peaceful and undisturbed and title thereto has not been disputed or questioned to the best of the Borrower's knowledge. Further, the Borrower has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. The Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to the Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by the Lender in the event the Lender acquires title to the Property pursuant to any foreclosure.

3.3. Permitted Exceptions. The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of the Borrower to pay in full the principal and interest on the Note in a timely manner or (2) the use of the Property for the use currently being made thereof, the operation of the Property as currently being operated or the value of the Property.

3.4. First Lien. Upon the execution by the Borrower and the recording of this Deed of Trust, and upon the execution and filing of UCC-1 financing statements or amendments thereto, the Lender will have a valid first lien on the Property and a valid security interest in all personal property encumbered hereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions.

3.5. Access to Utilities. The Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in the public right-of-way abutting the Property, or enter the Property via permanent easements not subject to termination except with the consent of the Borrower, and all such utilities are connected so as to serve the Property without passing over other property. All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to the Borrower or tenant of the Real Property.

3.6. Taxes Paid. The Borrower has filed all federal, state, county and municipal tax returns required to have been filed by the Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by the Borrower, and the Borrower has no knowledge of any basis for additional assessment with respect to such taxes and other charges. Further, the Property is free from delinquent taxes and other charges.

3.7. Single Tax Lot. The Real Property consists of a single lot or multiple tax lots; no portion of said tax lot(s) covers property other than the Real Property or a portion of the Real Property and no portion of the Real Property lies in any other tax lot.

3.8. Special Assessments. Except as disclosed in the Title Insurance Policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting the Real Property, nor, to the knowledge of the Borrower, are there any contemplated Improvements to the Real Property that may result in such special or other assessments.

3.9. Flood Zone. The Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

3.10. Condition of Improvements. The Property has not been damaged by fire, water, wind or other cause of loss since the earlier to occur of the initial visit to or inspection of the Property by the Lender or its agents in connection with the Loan. Upon completion, the Improvements constructed on the Property will be structurally sound, and will be kept in good repair and free of defects in materials and workmanship and will be constructed and installed in substantial compliance with the plans and specifications relating thereto. Upon installation, all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, shall be in good working order and condition and shall thereafter be maintained in good working order and condition.

3.11. No Condemnation. No part of any Property subject to the Deed of Trust has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, the Deed of Trust or the Loan or the usefulness of such property for the purposes contemplated by the loan application relating to the Loan ("Loan Application"), nor is any proceeding pending or known to be threatened or contemplated, for the partial or total condemnation or taking of the Property.

3.12. No Labor or Materialmen Claims. All parties furnishing labor and materials have been paid in full and, except for such liens or claims as are expressly disclosed in, and insured against by, the Title Insurance Policy, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Deed of Trust.

3.13. No Purchase Options. No tenant, person, party, firm, corporation or other entity has an option, right of first offer, or right of first refusal, to purchase the Property, any portion thereof or any interest therein.

3.14. Appraisal. All information provided by or on behalf of the Borrower to the appraiser in connection therewith was true, correct and complete in all material respects.

3.15. Boundary Lines. All of the Improvements which were included in determining the appraised value of the Real Property lie wholly within the boundaries and building restriction lines of the Real Property, and no Improvements on adjoining properties encroach upon the Real Property, and



no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to affect the value or marketability of the Real Property except those which are insured against by title insurance.

3.16. Use of Rents and Profits. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to the Borrower's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the rents and profits generated by or derived from the Property shall be diverted by the Borrower or utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

3.17. Non-Agricultural Purpose. The Property is used, and will, during the period of effectiveness of this Deed of Trust, continue to be used, exclusively for non-farming and non-agricultural purposes. The Borrower has no plan to convert the Property or otherwise use the Property for farming or agricultural purposes now or in the foreseeable future.

3.18. Security Agreements. There are no security agreements or financing statements affecting or encumbering any of the Property other than the security agreements and financing statements created in favor of the Lender.

3.19. Homestead. The Property forms no part of any property owned, used or claimed by the Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Property is located. The Borrower hereby disclaims and renounces each and every claim to all or any portion of the Real Property as a homestead.

3.20. Contracts. The Borrower will comply with all of its obligations under all contracts which are material to the operation of the Property ("Contracts"), including without limitation, all Leases in accordance with the Borrower's current practice.

#### **Section 4. Payment and Performance.**

Except as otherwise provided in this Deed of Trust, the Borrower shall pay to the Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of the Borrower's obligations under the Note, this Deed of Trust, and the Loan Documents.

#### **Section 5. Possession and Maintenance of the Property.**

The Borrower agrees that the Borrower's possession and use of the Property shall be governed by the following provisions:

5.1. Possession and Use. Until the occurrence of a trustee's sale, the Borrower may (i) remain in possession and control of the Property; (ii) use, operate or manage the Property; and (iii) collect the Rents from the Property (this privilege is a license from the Beneficiary to the Borrower automatically revoked upon default). The Real Property is not used principally for agricultural purposes.

5.2. Duty to Maintain. The Borrower shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

5.3. Nuisance, Waste. The Borrower shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, the Borrower will not remove, or grant to any other party

the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without the Lender's prior written consent.

5.4. Removal of Improvements. The Borrower shall not demolish or remove any Improvements from the Real Property without the Beneficiary's prior written consent. As a condition to the removal of any Improvements, the Lender may require the Borrower to make arrangements satisfactory to the Lender to replace such Improvements with Improvements of at least equal value.

5.5. Lender's Right to Enter. Provided that no Event of Default has occurred and is continuing beyond any applicable Cure Period, the Beneficiary and its agents and representatives may enter upon the Real Property at all reasonable times upon at least three (3) business days prior written notice to Grantor to attend to the Beneficiary's interests and to inspect the Real Property for purposes of the Borrower's compliance with the terms and conditions of this Deed of Trust. The requirement for written notice in this Subsection 5.5 is satisfied by an email sent to Barbara A. Merlino Henry or to Thomas Beeks. Where an Event of Default has continued beyond any applicable Cure Period, the Beneficiary and its agents and representatives may enter upon the Real Property without prior written notice but only at reasonable times.

5.6. Compliance with Governmental Requirements. The Borrower shall promptly comply, and shall promptly cause compliance by all agents, tenants or other persons or entities of every nature whatsoever who rent, lease or otherwise use or occupy the Real Property in any manner, with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. The Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as the Borrower has notified the Beneficiary in writing prior to doing so and so long as, in the Beneficiary's reasonable opinion, the Beneficiary's interests in the Property are not jeopardized. The Beneficiary may require the Borrower to post adequate security or a surety bond, reasonably satisfactory to the Beneficiary, to protect the Beneficiary's interest.

5.7. Duty to Protect. The Borrower agrees not to abandon the Property. The Borrower shall do all other acts, in addition to those acts set forth above in this Section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property, its value, and the security interests granted to the Beneficiary hereunder.

#### **Section 6. Due on Sale - Consent by the Lender.**

The Beneficiary may, at its option, (i) declare immediately due and payable all sums secured by this Deed of Trust, or (ii) increase the interest rate provided for in the Note or other document evidencing the Indebtedness and impose such other conditions as the Beneficiary deems appropriate, upon the sale or transfer, without the Borrower's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by the Beneficiary if such exercise is prohibited by federal law or by Washington law.

#### **Section 7. Taxes and Liens.**

The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

7.1. Payment. The Borrower shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges, fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. The Borrower shall maintain the Property free of all liens having priority over or equal to the interest of the Beneficiary under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

7.2. Utilities. The Borrower shall pay or cause to be paid when due all utility charges which are incurred by the Borrower or others for the benefit of or service to the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such assessments or charges are liens thereon.

7.3. Right to Contest. The Borrower may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as the Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, the Borrower shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after the Borrower has notice of the filing, secure the discharge of the lien, or if requested by the Lender, deposit with the Lender cash or a sufficient corporate surety bond or other security satisfactory to the Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, the Borrower shall defend itself and the Beneficiary and shall satisfy any adverse judgment before enforcement against the Property. The Borrower shall name the Beneficiary as an additional obligee under any surety bond furnished in the contest proceedings.

7.4. Evidence of Payment. The Borrower shall upon demand furnish to the Beneficiary satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to the Beneficiary at any time a written statement of the taxes and assessments against the Property.

7.5. Notice of Construction. The Borrower shall notify the Beneficiary at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. The Borrower will upon request of the Beneficiary furnish to the Beneficiary advance assurances satisfactory to the Beneficiary that the Borrower can and will pay the cost of such Improvements.

#### **Section 8. Property Damage Insurance; Damage and Destruction.**

The following provisions relating to insuring the Property are a part of this Deed of Trust.

8.1. Required Insurance. The Borrower shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, the following policies of insurance:

- (i) Insurance against loss or damage to the Property by fire and other risks, written on an "all risk" special perils, 100% full replacement cost basis, without deduction for foundations and footings, and without co-insurance, and with not more than \$10,000 deductible from the loss payable for any casualty.

- (ii) Commercial general liability insurance, including coverage for elevators and escalators, if any, on the Property and completed operations coverage for two years after any construction or repair at the Property has been completed, on an occurrence basis, against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 for one person and \$2,000,000 per occurrence for personal injury or death and \$1,000,000 per occurrence for damage to property.
- (iii) Workers compensation insurance covering the Borrower, in accordance with the requirements of Washington law.
- (iv) During the course of any construction or repair at the Property, all risk builders risk course of construction insurance against all risks of physical loss, on a completed value basis, including collapse and transit coverage, with a deductible not to exceed \$10,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy" endorsement, and insuring all general contractors and subcontractors of any tier.
- (v) Boiler and machinery insurance covering any pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment located on the Property, and insurance against loss of occupancy or use arising from any breakdown therein, all in such amounts as are satisfactory to the Lender.
- (vi) Business interruption, use and occupancy or rent loss insurance on the Property covering loss of the use of the Property caused by the perils covered by the policies described in (i) and (v) above, for a period of 12 months or such longer period as the Lender shall require, in an amount not less than 100% of the projected annual revenue from the Property as determined by the Lender, and written on a gross rental income, gross profits or extended period of indemnity form.
- (vii) If all or any portion of any building located on the Property is located in an area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in an amount at least equal to the principal amount of the Loan or to the maximum amount of coverage allowed for the particular type of property under the National Flood Insurance Program, whichever is less.
- (viii) Such other insurance, and in such amounts, as may from time to time be required by the Lender against the same or other hazards.

In addition to the insurance policies identified in 8.1(i) – 8.1(viii) above, the Borrower shall at all times require and ensure that any contractors performing work at the Property, at said contractor's sole cost and expense, maintain and keep in force or cause to be provided, maintained and kept in force, commercial general liability insurance, on an occurrence basis, against claims for personal injury, including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 for one person and \$2,000,000 per occurrence for personal injury or death and \$1,000,000 per occurrence for damage to property; workers compensation insurance covering any contractors performing work at the Property, in accordance with the requirements of Washington law; and errors and omissions insurance covering any architects and engineers performing professional services with respect to the Property, in the amount of \$1,000,000 or

such greater amount as the Lender may require ("Contractor's Policies"). In the event that Borrower fails to require and ensure that its contractors maintain and keep in force said Contractor's Policies, Borrower acknowledges and agrees that all such Contractor's Policies shall be Borrower's sole and full responsibility.

8.2. Insurance Companies. All policies of insurance required by this Deed of Trust shall be issued by companies, and in amounts in each company, and in a form, satisfactory to the Beneficiary and, without limitation on the generality of the foregoing, shall comply with the following provisions:

- (i) All policies of insurance shall be issued by insurance companies having an AM Best's Rating Guide Policy Rating of not less than A and Financial Rating of not less than VIII.
- (ii) All policies of insurance shall be maintained for and name the Borrower and the Beneficiary as insureds, as their respective interests may appear, and the policies required by Section 8.1(i), (iv), (v), (vi) and (vii) shall have attached thereto a standard mortgagee's loss payable endorsement for the benefit of the Beneficiary in form satisfactory to the Beneficiary,
- (iii) All policies of insurance shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Borrower or the Beneficiary which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against the Borrower, and shall provide that the amount payable for any loss shall not be reduced by reason of coinsurance.
- (iv) All policies of insurance shall contain a provision that they will not be cancelled or amended, including any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to the Beneficiary.

8.3. Evidence of Insurance. The Borrower shall furnish the Beneficiary with the original of all required policies of insurance or certificates satisfactory to the Beneficiary. At least 30 days prior to the expiration of each such policy, the Borrower shall furnish the Beneficiary with evidence satisfactory to the Beneficiary of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust.

8.4. Damage and Destruction. The Borrower shall give the Beneficiary prompt notice of any damage to or destruction of any substantial portion of or all of the Property, and the provisions contained in the following paragraphs of this Subsection shall apply in the event of any such damage or destruction. In the case of loss covered by policies of insurance, the Beneficiary is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Borrower, or (ii) to allow the Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case the Beneficiary shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Beneficiary in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Deed of Trust, and shall be reimbursed to the Beneficiary upon demand. In the event of any insured damage to or destruction of the Property or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Deed of Trust or applied to the repair and restoration of the Property, as the Beneficiary in its sole discretion shall elect. In the event that the Beneficiary shall elect that proceeds of insurance are to be applied to the repair and restoration of the Property, the Borrower hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and

restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

**Section 9. Assignment of Leases and Rents and Profits.**

As additional and collateral security for the payment and performance of the obligations and cumulative of any and all rights and remedies herein provided for, the Borrower hereby absolutely and presently assigns to the Beneficiary all present and future Leases, and all present and future Rents and Profits. The Borrower hereby grants to the Beneficiary the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose the Borrower does hereby, irrevocably make, constitute and appoint the Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any obligations are outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of the Borrower and shall not be affected by any disability or incapacity suffered by the Borrower subsequent to the date hereof). The Beneficiary shall be without liability for any loss that may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Deed of Trust, the Borrower shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of an Event of Default, the Borrower's license shall automatically terminate without notice to the Borrower and the Beneficiary may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, the Borrower shall be the agent of the Beneficiary in collection of the Rents and Profits and all of the Rents and Profits so collected by the Borrower shall be held in trust by the Borrower for the sole and exclusive benefit of the Beneficiary and the Borrower shall, within one (1) business day after receipt of any Rents and Profits, pay the same to the Beneficiary to be applied by the Beneficiary as hereinafter set forth. The Borrower hereby irrevocably agrees that any tenant paying Rents and Profits under its Lease as directed by the Beneficiary shall be deemed to have paid such amount in satisfaction of such tenant's obligation under such Lease, and each tenant may rely on the provisions of this sentence. Neither the demand for or collection of Rents and Profits by the Beneficiary, nor the exercise of the Beneficiary's rights as assignee of the Leases, shall constitute any assumption by the Beneficiary of any obligations under any Lease or other agreement relating thereto. The Beneficiary is obligated to account only for such Rents and Profits as are actually collected or received by the Beneficiary. The Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from the Beneficiary of an Event of Default hereunder, pay said Rents and Profits to the Beneficiary without liability to determine the actual existence of any Event of Default claimed by the Beneficiary. The Borrower hereby waives any right, claim or demand which the Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to the Beneficiary, and any such payment shall discharge such payor's obligation to make such payment to the Borrower. All Rents and Profits collected or received by the Beneficiary shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the obligations, in whatever order or priority as to any of the items so mentioned as the Beneficiary directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by the Beneficiary of any rights under this Section nor the application of any Rents and Profits to the obligations shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

**Section 10. Actions by the Beneficiary To Preserve Real Property, the Lender's Expenditures.**

Should the Borrower fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, the Beneficiary in its own discretion, without obligation so to do and without releasing the Borrower from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, the Beneficiary shall have and is hereby given the right, but not the obligation, (1) to enter upon and take possession of Real Property; (2) to make additions, alterations, repairs and improvements to the Real Property which it may consider necessary and proper to keep the Real Property in good condition and repair; (3) to appear and participate in any action or proceeding affecting or which may affect the Real Property, the security hereof or the rights or powers of the Beneficiary; (4) to pay any impositions asserted against the Real Property and to do so according to any bill, statement or estimate procured from the appropriate office only after inquiry into the accuracy of the bill, statement or estimate and into the validity of any imposition; (5) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the reasonable judgment of the Beneficiary affects the Real Property or the security of this Deed of Trust or which may be prior or superior hereto; (6) to seek judicial appointment of a receiver to take custody, possession and control of the Property and otherwise perform the Borrower's obligations provided for herein or in any of the Loan Documents; and (7) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Borrower irrevocably appoints the Beneficiary its true and lawful attorney in fact, at the Beneficiary's election, to do and cause to be done all or any of the foregoing in the event the Beneficiary shall be entitled to take any or all of the action provided for in this Section. The Borrower shall immediately, upon demand therefor by the Beneficiary, pay all reasonable costs and expenses incurred by the Beneficiary in connection with the exercise by the Beneficiary of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and reasonable attorney's fees and expenses, all of which shall constitute so much additional indebtedness secured by this Deed of Trust immediately due and payable, with interest thereon from the date of such demand until paid, at the default rate as set forth in Subsection 2.5.1 of the Loan Agreement.

#### **Section 11. Defense of Title.**

The following provisions relating to ownership of the Property are a part of this Deed of Trust:

11.1. **Title.** Borrower warrants that: (i) the Borrower holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Lender in connection with this Deed of Trust, and (ii) the Borrower has the full right, power, and authority to execute and deliver this Deed of Trust to the Lender.

11.2. **Defense of Title.** Subject to all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Lender in connection with this Deed of Trust, the Borrower warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions the Borrower's title or the interest of the Trustee or the Beneficiary under this Deed of Trust, the Borrower shall defend the action at its sole expense. The Borrower may be the nominal party in such proceeding, but the Beneficiary shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of the Beneficiary's own choice, and the Borrower will deliver, or cause to be delivered, to the Beneficiary such instruments as the Beneficiary may request from time to time to permit such participation.

11.3. **Compliance With Laws.** The Borrower warrants that the Property and the Borrower's use of the Property comply with all existing applicable laws, ordinances, and regulations of governmental authorities.

11.4. Survival of Representations and Warranties. All representations, warranties, and agreements made by the Borrower in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as the Borrower's Indebtedness shall be paid in full.

**Section 12. Condemnation.**

The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

12.1. Proceedings. If any proceeding in condemnation is filed, the Borrower shall promptly notify the Beneficiary in writing, and the Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award. The Borrower may be the nominal party in such proceeding, but the Beneficiary shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at the Borrower's expense, and the Borrower will deliver or cause to be delivered to the Beneficiary such instruments and documentation as may be requested by the Beneficiary from time to time to permit such participation.

12.2. Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, the Beneficiary may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by the Trustee or the Beneficiary in connection with the condemnation.

**Section 13. Imposition of Taxes, Fees and Charges by Governmental Authorities.**

The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

13.1 Current Taxes, Fees and Charges. Upon request by the Beneficiary, the Borrower shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by the Beneficiary to perfect and continue the Beneficiary's lien on the Real Property. The Borrower shall reimburse the Beneficiary for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

13.2 Taxes. The following shall constitute taxes to which this Section applies: (i) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (ii) a specific tax on the Borrower which the Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (iii) a tax on this type of Deed of Trust chargeable against the Beneficiary or the holder of the Note; and (iv) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by the Borrower.

13.3 Subsequent Taxes. If any tax to which this Section applies is enacted subsequent to the date of this Deed of Trust, the Borrower shall either (i) pay the tax before it becomes delinquent and shall, upon written request, exhibit to the Beneficiary official receipts evidencing such payments, or (ii) contest the tax, if Borrower reasonably believes it was wrongfully levied, assessed, imposed or charged, provided that Borrower proceeds with said contest within the appropriate time frames as stated in law or by the notice received from taxing or other officials or agencies, and deposits with the Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to the Beneficiary. Borrower agrees to provide to the Beneficiary copies of all information received by the Borrower and all



documentation provided to or produced in association with said contest. Additionally, Borrower agrees to provide Beneficiary copies of all documentation or otherwise that forms the basis for Borrower's belief that Borrower's challenge will be sustained.

#### **Section 14. Environmental Matters.**

The Borrower hereby represents and warrants to the Beneficiary that, except as disclosed in any environmental site assessment referred to in the Loan Agreement, and with the exception of Permitted Materials, (i) neither the Borrower nor any of its affiliates or subsidiaries, nor to the best of the Borrower's knowledge, any other person or entity, has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Real Property or any part thereof; (ii) none of the property described above has ever been used by the Borrower or any of its affiliates or subsidiaries, or to the best of the Borrower's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Material except as previously disclosed by the Borrower to the Beneficiary; (iii) there are no above ground or underground storage tanks located on the Real Property except for the previously disclosed underground storage tanks maintained and used by the fuel service station business on the Real Property; and (iv) neither the Borrower nor the Real Property are subject to any private or governmental lien or judicial or administrative notice or action pending, or to the best of the Borrower's knowledge, threatened, relating to Hazardous Materials or the environmental condition of the Property. The Borrower shall not allow any Hazardous Materials other than Permitted Materials to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Property, and shall comply with all Hazardous Materials Laws affecting the Property. Without limitation on any other provision hereof, the Borrower hereby agrees to indemnify and hold the Beneficiary harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Hazardous Materials Law, paid, incurred or suffered by or asserted against the Beneficiary as a direct or indirect result of any of the following, unless caused by the Beneficiary: the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from the Property or any part thereof; or any liens against the Property permitted or imposed by any Hazardous Materials Law, or any actual or asserted liability or obligations of the Borrower or any of its affiliates or subsidiaries under any Hazardous Materials Law; or any actual or asserted liability or obligations of the Beneficiary or any of its affiliates or subsidiaries under any Hazardous Materials Law relating to the Property. The representations, warranties, covenants, indemnities and obligations provided for in this Section shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Deed of Trust; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Property on or after the date on which the Beneficiary or any other party obtains title to and possession of the Real Property as a result of an exercise by the Beneficiary of its remedies under this Deed of Trust or any of the other Loan Documents or as a result of a conveyance of title to the Real Property by the Borrower to the Beneficiary or such other party in lieu of such exercise of remedies.

#### **Section 15. Security Agreement; Financing Statements.**

The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

15.1. Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and the Beneficiary shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

15.2. Security Interest. Upon request by the Beneficiary, the Borrower shall take whatever action is requested by the Beneficiary to perfect and continue the Beneficiary's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, the Beneficiary may, at any time and without further authorization from the Borrower, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. The Borrower shall reimburse the Beneficiary for all expenses incurred in perfecting or continuing this security interest. Upon default, the Borrower shall not remove, sever or detach the Personal Property from the Property. Upon default, the Borrower shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to the Borrower and the Beneficiary and make it available to the Lender within three (3) days after receipt of written demand from the Beneficiary to the extent permitted by applicable law.

15.3. Addresses. The mailing addresses of the Borrower and the Lender from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the preamble of this Deed of Trust.

#### **Section 16. Further Assurances; Attorney-In-Fact.**

The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

16.1. Further Assurances. At any time, and from time to time, upon request of the Beneficiary, the Borrower will make, execute and deliver, or will cause to be made, executed, or delivered, to the Beneficiary or to the Beneficiary's designee, and when requested by the Beneficiary, cause to be filed, recorded, re-filed, or rerecorded, as the case may be, at such times and in such offices and places as the Beneficiary may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole reasonable opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (i) the Borrower's obligations under the Note, this Deed of Trust, and the Loan Documents, and (ii) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by the Borrower. Unless prohibited by law or the Beneficiary agrees to the contrary in writing, the Borrower shall reimburse the Beneficiary for all costs and expenses incurred in connection with the matters referred to in this paragraph.

16.2. Attorney-in-Fact. If the Borrower fails to do any of the things referred to in the preceding paragraph, the Beneficiary may do so for and in the name of the Borrower and at the Borrower's expense. For such purposes, the Borrower hereby irrevocably appoints the Beneficiary as the Borrower's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in the Beneficiary's sole opinion, to accomplish the matters referred to in the preceding paragraph.

#### **Section 17. Full Performance.**

If the Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon the Borrower under this Deed of Trust, the Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to the Borrower suitable statements of

termination of any financing statement on file evidencing the Beneficiary's security interest in the Rents and Profits and the Personal Property. Any reconveyance fee shall be paid by the Borrower, if permitted by applicable law. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness of any such matters or facts.

#### **Section 18. Events of Default.**

Each of the following, at the Beneficiary's option, shall constitute an Event of Default under this Deed of Trust:

18.1. Payment Default. The Borrower fails to make any payment when due under the Indebtedness after a ten-day grace period.

18.2. Other Defaults. The Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Loan Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between the Lender and the Borrower.

18.3. Compliance Default. The Borrower fails to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Loan Documents.

18.4. Default on Other Payments. Failure of the Borrower within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

18.5. Default in Favor of Third Parties. Should the Borrower default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of the Borrower's property or the Borrower's ability to repay the Indebtedness or the Borrower's ability to perform its obligations under this Deed of Trust or any of the Loan Documents.

18.6. False Statements. Any warranty, representation or statement made or furnished to the Beneficiary by the Borrower or its behalf under this Deed of Trust or the Loan Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

18.7. Defective Collateralization. This Deed of Trust or any of the Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

18.8. Insolvency. The insolvency of the Borrower, the appointment of a receiver for any part of the Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Borrower.

18.9. Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of the Borrower or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of the Borrower's accounts, including deposit accounts, with the Lender. However, this Event of Default shall not apply if there is a good faith dispute by the Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding.

and if the Borrower gives the Lender written notice of the creditor or forfeiture proceeding and deposits with the Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by the Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

18.10. Breach of Other Agreement. Any breach by the Borrower under the terms of any other agreement between the Borrower and the Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of the Borrower to the Lender, whether existing now or later.

18.11. Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

18.12. Adverse Change. A material adverse change occurs in the Borrower's financial condition, or the Lender reasonably believes the prospect of payment or performance of the Indebtedness is impaired.

18.13. Insecurity. The Beneficiary in good faith believes itself insecure due to a material adverse change related directly to, and caused by or through some action or inaction of, the Borrower, Guarantor, or Indemnitor.

18.14. Right to Cure. If any default, other than a default in payment, is curable, it may be cured if the Borrower, after the Lender sends written notice to the Borrower demanding cure of such default: (i) cures the default within thirty (30) days; or (ii) if the cure requires more than thirty (30) days, immediately initiates steps which the Lender deems in its reasonable discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical ("Cure Period"). Such written notice will be sufficient if it is provided by email to Barbara A. Merlino Henry and/or the Borrower's agent, Thomas Beeks, or any other designated agent of the Borrower.

#### **Section 19. Rights and Remedies on Default.**

If an Event of Default occurs under this Deed of Trust, at any time thereafter, then the Trustee or the Beneficiary may exercise anyone or more of the following rights and remedies:

19.1. Election of Remedies. Election by the Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of the Borrower under this Deed of Trust, after the Borrower's failure to perform, shall not affect the Beneficiary's right to declare a default and exercise its remedies.

19.2. Accelerate Indebtedness. The Beneficiary shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which the Borrower would be required to pay.

19.3. Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to exercise its power of sale and to foreclose by notice and sale, and the Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

19.4. UCC Remedies. With respect to all or any part of the Personal Property, the Beneficiary shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

19.5. Collect Rents and Profits. The Beneficiary shall have the right, upon notice to the Borrower to take possession of and manage the Property and collect the Rents and Profits, including amounts past due and unpaid, and apply the net proceeds, over and above the Beneficiary's costs, against the Indebtedness. In furtherance of this right, the Beneficiary may require any tenant or other user of the Property to make payments of rent or use fees directly to the Beneficiary. If the Rents and Profits are collected by the Beneficiary, then the Borrower irrevocably designates the Beneficiary as the Borrower's attorney-in-fact to endorse instruments received in payment thereof in the name of the Borrower and to negotiate the same and collect the proceeds. Payments by tenants or other users to the Beneficiary in response to the Beneficiary's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. The Beneficiary may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

19.6. Appoint Receiver. The Beneficiary shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power (i) to protect and preserve the Property, (ii) to operate the Property preceding or pending foreclosure or sale, (iii) to collect the Rents and Profits from the Property, and (iv) to sell the Property as appropriate and with, and subject to, court approval, and apply the proceeds, over and above the cost of the receivership and sale, against the Indebtedness. The receiver may serve without bond if permitted by law. The Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by the Lender shall not disqualify a person from serving as a receiver.

19.7. Tenancy at Sufferance. If the Borrower remains in possession of the Property after the Property is sold as provided above or the Beneficiary otherwise becomes entitled to possession of the Property upon default of the Borrower, then the Borrower shall become a tenant at sufferance of the Beneficiary or the purchaser of the Property and shall, at the Beneficiary's option, either (i) pay a reasonable rental for the use of the Property, or (ii) vacate the Property immediately upon the demand of the Beneficiary.

19.8. Deed in Lieu of Foreclosure. The Trustee or the Beneficiary shall have the right to accept any deeds in lieu of foreclosure which may constitute an absolute conveyance of all of the Borrower's rights, title and interest in and to the Property and is not intended as a mortgage, trust conveyance, or security of any kind. After the delivery, operative effect and recording of any deeds in lieu, the Loan Documents shall remain in full force and effect, and the interest of the Beneficiary in the Property conveyed by any deed in lieu shall not constitute a merger of interests conveyed by the deed in lieu with the interests of the Beneficiary in the Property under the Loan Documents.

19.9. Other Remedies. The Trustee or the Beneficiary shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity. All of the Beneficiary's rights and remedies are cumulative and non-exclusive.

19.10. Notice of Sale. The Beneficiary shall give the Borrower reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten business (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

19.11. Sale of the Property. To the extent permitted by applicable law, the Borrower hereby waives any and all rights to have the Property marshaled. In exercising its rights and remedies, the Trustee or the Beneficiary shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. The Beneficiary shall be entitled to bid at any public sale on all or any portion of the Property.

19.12. Attorneys' Fees; Expenses. If the Beneficiary institutes any suit or action to enforce any of the terms of this Deed of Trust, the Beneficiary shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees incurred in such suit or action. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses the Beneficiary incurs that in its opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, the Beneficiary's reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and reasonable fees for the Trustee, to the extent permitted by applicable law. The Borrower also will pay any court costs, in addition to all other sums provided by law.

19.13. Rights of Trustee. The Trustee shall have all of the rights and duties of the Beneficiary as set forth in this Section.

## **Section 20. Powers and Obligations of Trustee.**

The following provisions relating to the powers and obligations of the Trustee (pursuant to the Lender's instructions) are part of this Deed of Trust:

20.1. Powers of Trustee. In addition to all powers of the Trustee arising as a matter of law, the Trustee shall have the power to take the following actions with respect to the Property upon the written request of the Lender and the Borrower: (i) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (ii) join in granting any easement or creating any restriction on the Real Property; and (iii) join in any subordination or other agreement affecting this Deed of Trust or the interest of the Beneficiary under this Deed of Trust.

20.2. Obligations to Notify. The Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which the Borrower, the Lender, or the Trustee shall be a party, unless required by applicable law, or unless the action or proceeding is brought by the Trustee.

20.3. Trustee. The Trustee shall meet all qualifications required for the Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and the Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

20.4. Successor Trustee. The Beneficiary, at its option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by the Beneficiary and recorded in the office of the recorder of Skagit County, State of Washington. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Borrower, the book and page or the Auditor's File Number where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by the Beneficiary or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of the Trustee shall govern to the exclusion of all other provisions for substitution.

**Section 21. Notices.**

Subject to applicable law, and except for notice required or allowed by law to be given in another manner, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to the Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of the party's current address. Subject to applicable law, and except for notice required or allowed by law to be given in another manner, if there is more than one Borrower, any notice given by the Lender to any Borrower is deemed to be notice given to all Borrowers.

**Section 22. Miscellaneous Provisions.**

The following miscellaneous provisions are a part of this Deed of Trust:

22.1. **Amendments.** This Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

22.2. **Annual Reports.** The Borrower shall furnish to the Lender, upon its written request, which request may be made in an email delivered to Borrower, its agents or representatives, a certified statement of net operating income received from the Property during the Borrower's previous fiscal year in such form and detail as the Lender shall require. "**Net Operating Income**" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

22.3. **Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

22.4. **Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of the Lender in any capacity, without the written consent of the Lender.

22.5. **Governing Law.** This Deed of Trust will be governed by the laws of the State of Washington without regard to its conflicts of law provisions. This Deed of Trust has been accepted by the Lender in the State of Washington.

22.6. **Choice of Venue.** If there is a lawsuit, the Borrower agrees upon the Lender's request to submit to the jurisdiction of the state and federal courts of Skagit County, State of Washington.

22.7. **No Waiver.** Each party shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by the party waiving the same. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right. A waiver by a party of a provision of this Deed of Trust shall not prejudice or constitute a waiver of the waiving party's right otherwise to demand strict compliance with that provision or any other provision

of this Deed of Trust. No prior waiver by a party, nor any course of dealing between the Beneficiary and the Borrower, shall constitute a waiver of any of a party's rights or of any of the Indebtedness and a party's obligations as to any future transactions. Whenever the consent of a party is required under this Deed of Trust, the granting of such consent by the party in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the reasonable discretion of that party.

22.8. Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

22.9. Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of the Borrower's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than the Borrower, the Beneficiary, without notice to the Borrower, may deal with the Borrower's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing the Borrower from the obligations of this Deed of Trust or liability under the Indebtedness.

22.10. Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

22.11. Waive Jury. ALL PARTIES TO THIS DEED OF TRUST HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

22.12. Waiver of Homestead Exemption. The Borrower hereby releases and waives all rights and benefits of the homestead exemption laws, if applicable, of the State of Washington as to all Indebtedness secured by this Deed of Trust.

[Signature and Notary Page Follows]



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

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND BORROWER AGREES TO ITS TERMS.

**GRANTOR:**

GOLD COAST 2700 PROPERTIES 2, LLC

By

  
Thomas Beeks, Manager

STATE OF WASHINGTON


} ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that THOMAS BEEKS is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Manager of GOLD COAST 2700 PROPERTIES 2, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 28 day of October, 2022.



  
Printed Name Jill m. Ravenscraft  
Notary Public in and for the State of Washington,  
My Commission Expires 1-14-26