Skamania County, WA
Total: $440.00 Pgs=26
TRST AGLS
Request of: COLUMBIA GORGE TITLE- SKAMANIA
eRecorded by: Simplifile

2020-000548
03/04/2020 01:17 PM

When Recorded Mail To:

Northwest Property Resources LLC
1220 Main Street, Suite 500
Vancouver, WA 98660
Attention: Stephanie Koch

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

S20-0088KM

Document Title(s): 1. Construction Deed of Trust 2. Security Agreement 3. Assignment of Leases and Rents 4. Fixture Filing
Reference Number(s) of Documents assigned or released: _____
Grantor/Assignor: 1. Gorge Homes, LLC, a Washington limited liability company ☐ Additional names on page _____ of document.
Grantee/Assignee: 1. Northwest Property Resources LLC, a Washington limited liability company ☐ Additional names on page _____ of document.
Partial Legal Description: Lot 4 HIDDEN RIDGE AF #2018000254 ☒ Additional Legal on Exhibit A of document, Pg 26
Assessor's Property Tax Parcel/Account Number: 03-07-35-4-4-1004-00

Unofficial Copy

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

This Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (hereinafter called "Deed of Trust") is made March 2, 2020, among Gorge Homes, LLC, a Washington limited liability company whose address is 408 Columbia Street, North Bonneville, WA 98639 (hereinafter called "Grantor"); UPF Washington Incorporated, a Washington corporation, whose address is 12410 E. Mirabeau Parkway, Suite 100, Spokane Valley, WA 99216 (hereinafter called "Trustee"); and Northwest Property Resources LLC, a Washington limited liability company, whose address is 1220 Main Street, Suite 500, Vancouver, WA 98660 (hereinafter called "Beneficiary").

W I T N E S S E T H :

That Grantor does hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in the County of Skamania, State of Washington, described in Exhibit A attached hereto and by this reference incorporated herein, together with any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements, which are herein collectively called the "Property;"

Together With all interests, estate or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Property;

Together With all easements, rights-of-way and rights used in connection therewith or as a means of access to the Property, and all tenements, hereditaments and appurtenances of and to the Property, and all water rights and shares of stock evidencing the same;

Together With all right, title, and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property; and any and all sidewalks, alleys, and strips of land adjacent to or used in connection with the Property;

Together With all right, title and interest of Grantor in and to all tangible personal property now or hereafter owned by Grantor and now or at any time hereafter located on or at the Property or used in connection therewith (the "Personal Property"), including, but not limited to, all goods, construction and building materials, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs, maintenance, and all other equipment of every kind), lobby and all other indoor and outdoor furniture, rugs, carpets, and other floor coverings, all inventory related to the operation of the Property and any business operated thereon by Grantor, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and building maintenance and other supplies and all proceeds thereof;

Unofficial Copy

Together With all right, title, and interest of Grantor in the funds, if any, deposited pursuant to Section 1.6 or Section 1.7;

Together With all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

Together With Grantor's right, title, and interest in any and all existing and future leases (including subleases thereof), whether written or oral, rental agreements and all future agreements for use and occupancy, and any and all extensions, renewals, and replacements thereof, upon all or relating to any part of the Property (hereinafter collectively referred to as the "Leases");

Together With any and all guaranties of tenant's performance under any and all of the Leases;

Together With the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits, and other income of any nature now due or which may become due or to which Grantor may now or hereafter (including any income of any nature coming due during any redemption period) become entitled to or may make demand or claim for, arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to, minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents and liquidated damages following default in any Lease, all accounts receivable, instruments, and general intangibles related to the operation of the Property and any business operated thereon by Grantor and all proceeds thereof, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Grantor may have against any tenant under the Leases or any subtenants or occupants of the Property (all such monies, rights and claims described in this paragraph being hereinafter called "Cash Collateral"), excepting therefrom, any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Leases;

Together With all of Grantor's interest in and to all contracts and general intangibles relating to the Property and/or the construction of improvements thereon, including without limitation any and all construction contracts, architect contracts and plans and specifications created thereunder, development contracts, property management contracts, payment and/or performance bonds, and claims for defective materials or workmanship, including any judgments and awards arising from such claims;

Together With all additions, accessions, replacements, substitutions, proceeds, and products of the Property described herein;

Unofficial Copy

Together With all books and records pertaining to any and all of the Property and related collateral, including records relating to tenants under any Leases and the qualifications of such tenants and any certificates, vouchers, and other documents in any way related thereto and records relating to the application and allocation of any federal, state, or local tax credits or benefits, and including computer-readable memory and any computer hardware or software necessary to access and process such memory;

Subject, however, to a license hereby granted by Beneficiary to Grantor, but limited as hereinafter provided, to collect and receive all of the Cash Collateral.

The entire estate, property, and interest hereby conveyed to Trustee may hereafter be referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the principal amount of $279,210.13 with interest thereon, evidenced by that certain promissory note of even date herewith executed by Grantor, which has been delivered to, and is payable to, the order of Beneficiary and which, by this reference, is made a part hereof, and any and all modifications, extensions, and renewals thereof (the "Note"). The interest rate, payment terms, or the balance due on the Note and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust.

2. Payment of all sums which may become due from Grantor, including without limitation, Grantor's liability for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards or for advances by Beneficiary or its successor; in each case, with interest thereon at the rate set forth herein, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by Grantor of all attorney fees and costs, including without limitation, the cost of any appraisal of the Property (whether or not obtained in an action for a deficiency judgment under RCW 61.24.100(3)), incurred by Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantor of all sums advanced by Beneficiary to or on behalf of Grantor for the purpose of clearing encumbrances or defects from the title to the Property described in this Deed of Trust where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Deed of Trust; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the United States Bankruptcy Code affecting Grantor or this Deed of Trust; and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate set forth herein.

Unofficial Copy

3. Payment of all other sums, with interest thereon, which may hereafter be loaned to Grantor by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

4. Payment and performance of all of the obligations of Grantor under that certain construction loan agreement between Grantor and Beneficiary of even date herewith related to the loan evidenced by the Note (together with all modifications, amendments, supplements, and exhibits thereto, the "Loan Agreement").

5. Notwithstanding anything to the contrary in this Deed of Trust or any of the other Loan Documents (defined below), Grantor's obligation to indemnify and hold Beneficiary harmless in accordance with the terms of that certain hazardous materials certificate and indemnity of even date herewith, shall not be secured by the Trust Estate.

This Deed of Trust, the Note, the Loan Agreement, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Documents." This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Washington.

ARTICLE 1
COVENANTS AND AGREEMENTS OF GRANTOR

Grantor hereby covenants and agrees:

1.1 Maintenance of the Property. The Property shall be maintained in good condition at all times. Grantor shall promptly make all necessary repairs, replacements, and renewals so that the value of the Property shall be maintained. Grantor shall not commit or permit any waste on the Property, including without limitation, any act or failure to act that impairs the value of the Trust Estate. Grantor shall comply with all laws, ordinances, regulations, and private restrictions affecting the Property. To the extent that the Property constitutes commercial property, Grantor shall operate the Property in such manner as to prevent deterioration of the land and improvements including fences, except for reasonable wear and tear from proper use. Grantor shall not demolish or remove any improvements from the Property without the written consent of Beneficiary.

1.2 Required Insurance. Grantor shall at all times provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, such insurance as are required by the Loan Documents and the following policies of insurance:

(a) Insurance against loss or damage to the building and improvements situated on the Property (the "Improvements") by fire and any of the risks covered by insurance of the type now known as "broad form of extended coverage," in an amount not less than the greater of (i) 100 percent of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (ii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer

Unofficial Copy

within the terms of the applicable policies; and with not more than $1,000.00 deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement;"

(b) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "broad form of extended coverage;"

(c) Such other insurance and in such amounts as may, from time to time, be required by Beneficiary against the same or other hazards, including, without limitation, business interruption insurance or insurance covering loss of rents and flood insurance where applicable; and

(d) All policies of insurance required by the terms of this Deed of Trust 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 Grantor 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 Grantor (Non-Contributory Standard Mortgage Clause and Lender's Loss Payable Endorsement—Form 438 BFU NS or CP 12—or their equivalent).

1.3 Delivery of Policies; Payment of Premiums; Proceeds.

(a) All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with an original of all policies of required insurance. If Beneficiary consents to Grantor providing any of the required insurance through blanket policies carried by Grantor and covering more than one location, then Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

(b) At least 30 days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage without at least 30 days' prior written notice to Beneficiary. In the event Grantor fails to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance and certificates required by this section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantor will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantor, the amount of all such premiums shall be secured by this Deed of Trust.

(c) In the event of loss, Grantor shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantor. Proceeds shall be paid directly to Beneficiary who may compromise with any insurance company and make a final settlement which shall be binding upon Grantor. Beneficiary may, at its sole option, apply the insurance proceeds to the reduction of the indebtedness secured hereby in any order that Beneficiary may determine, whether or not the indebtedness is then due, or apply all or a portion of the insurance proceeds to the cost of restoring and rebuilding the portion of the Property that was damaged or destroyed. If Beneficiary elects to apply the insurance proceeds to rebuilding and restoration, Beneficiary will be entitled to hold the proceeds, and the proceeds will be released only on the terms and conditions that Beneficiary may require in its sole discretion, including but not limited to prior approval of plans and release or waiver of construction liens. No proceeds will be released if Grantor is in default under this Deed of Trust.

1.4 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantor in and to all policies of insurance required by Section 1.2 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate.

1.5 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary and its directors, officers, members, managers, employees, agents, and representatives harmless from all liability, claim, loss, cost, or damage, by reason of said litigation, including reasonable attorney fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment.

(b) Grantor waives any and all right to claim or recover against Beneficiary, its directors, officers, members, managers, employees, agents, and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title

Unofficial Copy

paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

1.6 Taxes and Liens. Grantor shall pay before they become delinquent all taxes and assessments levied against or on account of the Trust Estate and shall pay as due all claims for work done on or for services rendered or material furnished to the Property. Special assessments shall be paid currently, without deferral, unless the lien for deferred assessments is subordinate to the interest of Beneficiary under this Deed of Trust, or Beneficiary gives its prior written consent to the deferral. Grantor shall maintain the Trust Estate free of any liens having priority over or equal to the interest of Beneficiary under this Deed of Trust except for "Permitted Encumbrances" as defined in Section 1.10, the lien of taxes and assessments not delinquent, and except as hereinafter otherwise provided. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Trust Estate is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorney fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. The assessor or tax collector of the county in which the Property is located is authorized to deliver to Beneficiary a written statement of the property taxes assessed or owing at any time.

1.7 Reserves. At any time, Beneficiary may require Grantor to maintain reserves for payment of taxes (including special assessments and other charges against the Trust Estate by governmental or quasi-governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to Beneficiary of an amount determined by Beneficiary to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Grantor shall upon demand pay such additional sum as Beneficiary shall determine to be necessary to cover the required payment. If Grantor desires to carry a package plan of insurance that includes coverage in addition to that required under this Deed of Trust, Beneficiary, if allowed by law, may at its option establish and administer a reserve for that purpose. In such event, the premium attributable to the required insurance coverage shall be quoted separately, and Beneficiary may permit Grantor to furnish a certificate of insurance rather than deposit the policy as required above. If at any time Beneficiary

holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, Beneficiary may, at its discretion, pay only that portion of the premium attributable to the required insurance coverage. If the blanket policy does not permit such partial payment, Beneficiary may use the reserve funds for the premium on a new, separate policy providing the required insurance coverage and allow the package policy to lapse. Beneficiary shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Grantor agrees that Beneficiary may commingle reserve funds with other funds of Beneficiary and need not invest them for the benefit of Grantor. Grantor agrees that Beneficiary need not pay Grantor interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

1.8 Expenditures by Beneficiary. If Grantor shall fail to comply with any provision of this Deed of Trust, Beneficiary may, at its option, on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the indebtedness secured hereby. Amounts so added shall be payable on demand with interest at the rate specified in the Note, or if more than one interest rate is applicable, to portions of the unpaid balance at the highest rate applicable to any portion of the principal balance of the Note (the "Note Rate") from the date of expenditure. The rights provided for in this section shall be in addition to any other rights or any remedies to which Beneficiary may be entitled on account of the default, and Beneficiary shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

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

1.10 Warranty; Defense of Title. Grantor warrants that Grantor holds good and marketable title to the Property in fee simple, free of all liens and encumbrances other than those, if any, set forth on Exhibit A, or set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Beneficiary in connection with this Deed of Trust (hereinafter referred to as "Permitted Encumbrances"). Grantor warrants and will forever defend the title against the claims, other than Permitted Encumbrances, of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary under this Deed of Trust, Grantor shall defend the action at Grantor's expense. If any Permitted Encumbrance is a lien, Grantor shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which with the lapse of time, the giving of notice, or any other action of a creditor, would be a default or enable any creditor to declare a default or foreclose any Permitted Encumbrance which is a lien.

1.11 Condemnation. Should any part of or interest in the Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Grantor receive any notice or other information

regarding such action, Grantor shall give immediate notice of such action to Beneficiary. Beneficiary shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the obligations secured by this Deed of Trust, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation. The proceeds of the award shall first be applied to all reasonable costs, expenses, and attorney fees necessarily paid or incurred by Beneficiary in connection with the Condemnation. In the event all or substantially all the Property is taken by Condemnation, all obligations secured by this Deed of Trust, at Beneficiary's election, shall become immediately due and payable. Beneficiary may, at its sole option, apply the remaining Condemnation Proceeds to the reduction of the obligations secured hereby in such order as Beneficiary may determine, or, if less than all the Property has been taken, Beneficiary may allow Grantor to use all or any portion of the remaining Condemnation Proceeds to pay the cost of restoring and improving the remaining Property. In the event that Beneficiary elects in its sole discretion to allow the Condemnation Proceeds to be used for restoration and improvement, the proceeds shall be held by Beneficiary and shall be released only upon such terms and conditions as Beneficiary shall require, including but not limited to, prior approval of plans and release of liens.

1.12 Imposition of Tax. Each of the following shall constitute taxes to which this paragraph applies: (a) a specific tax upon deeds of trust or upon all or any part of the indebtedness secured by a deed of trust; (b) a specific tax on the owner of property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust; (c) a tax on premises covered by a deed of trust chargeable against Beneficiary under the deed of trust or the holder of the note secured; and (d) a specific tax on all or any portion of the indebtedness secured hereby or on payments of principal and interest made by a Grantor under a deed of trust. If any federal, state, or local tax to which this paragraph applies is enacted subsequent to the date of this Deed of Trust, this shall have the same effect as a default and Beneficiary may exercise any or all of the remedies available to it in the Event of a Default unless the following conditions are met: (i) Grantor may lawfully pay the tax or charge imposed; and (ii) Grantor pays the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted.

1.13 Inspections and Appraisals. Beneficiary or its agents may enter upon the Property at any reasonable times to inspect or appraise it or to perform any of the acts it is authorized to perform under any of the Loan Documents, whether or not any default exists hereunder. If Grantor refuses to permit such inspection or appraisal, Beneficiary may specifically enforce performance of this provision. Grantor agrees to pay the cost of all appraisals required by Beneficiary in its sole discretion (a) to comply with (i) any applicable statute or regulation, or (ii) the request or directive (whether or not having the force of law) of any regulatory authority with jurisdiction over Beneficiary, (b) to comply with Beneficiary's policies concerning appraisals, or (c) at any time after the occurrence of an Event of Default. All such appraisal costs shall become a part of the indebtedness secured hereby and shall be payable on demand, together with interest thereon at the Note Rate.

1.14 Repayment of Advances. Upon receipt of notice, Grantor shall repay immediately all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Note Rate, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within 15 days of such notice will, at Beneficiary's option, constitute an Event of Default hereunder; or Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with reasonable attorney fees incurred at trial or in an appellate or bankruptcy proceeding.

1.15 Use of Property. The Property is not used principally for agricultural purposes and is not Grantor's residence. Moreover, the real property conveyed hereunder and legally described in Exhibit A is not used principally for agricultural purposes and is not Grantor's residence.

1.16 Use of Loan Proceeds. The commercial loan evidenced by the Note was not made, and its proceeds will not be used for personal, family, or household purposes.

1.17 Grantor's Representations and Warranties; Waiver. Grantor warrants that: (a) this Deed of Trust is executed at the request of borrower under the Loan Documents and not at the request of Beneficiary; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Trust Estate; (c) the provision of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree, or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from any borrower under the Loan Documents on a continuing basis information about said borrower's financial condition; and (e) Beneficiary has made no representations to Grantor about any borrower under the Loan Documents (including without limitation the creditworthiness of any borrower). Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Beneficiary from bringing any action against Grantor, including without limitation a claim for deficiency to the extent Beneficiary is otherwise entitled to a claim for deficiency, before or after Beneficiary's commencement or completion of a foreclosure action, either judicially or nonjudicially.

ARTICLE 2
SECURITY AGREEMENT; FIXTURE FILING

2.1 Creation of Security Interest. Grantor hereby grants to Beneficiary a security interest in (a) the Personal Property, (b) the Cash Collateral, and (c) any other item or portion of the Trust Estate in which a security interest may be granted under the Uniform Commercial Code of Washington (collectively, the "Secured Property") all as security for payment and performance of all obligations secured by this Deed of Trust.

2.2 Warranties, Representations, and Covenants of Grantor. Grantor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Secured Property to be acquired after the date hereof will be, the sole owner of the Secured Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantor will notify Beneficiary of, and will defend the Secured Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Grantor will not lease, sell, convey, or in any manner transfer the Secured Property without the prior written consent of Beneficiary.

(c) The Secured Property is not used or bought for personal, family, or household purposes.

(d) The Personal Property will be kept on or at the Property and Grantor will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with an article of equal suitability owned by Grantor free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.

(e) Grantor maintains a place of business in the State of Washington, and Grantor will immediately notify Beneficiary in writing of any change in its place of business.

(f) Grantor authorizes Beneficiary to file one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Washington in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

(g) All covenants and obligations of Grantor contained herein relating to the Trust Estate shall be deemed to apply to the Secured Property whether or not expressly referred to herein.

(h) This Deed of Trust constitutes a security agreement and a fixture filing as those terms are used in the Uniform Commercial Code of Washington.

2.3 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now or hereafter become such fixtures.

Unofficial Copy

ARTICLE 3
ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. Grantor hereby assigns to Beneficiary and grants to Beneficiary a security interest in all Leases as security for performance of all obligations secured by this Deed of Trust. This assignment is recorded in accordance with RCW 65.08.070.

3.2 Representations and Warranties. Grantor represents and warrants as follows:

(a) Grantor has good right, title, and interest in and to the Leases and Cash Collateral and good right to assign the same, and no other person has any right, title, or interest therein.

(b) Grantor has duly and punctually performed all and singular the terms, covenants, conditions, and warranties of the Leases on Grantor's part to be kept, observed, and performed.

(c) The existing Leases, if any, are valid and unmodified and are in full force and effect.

(d) Grantor has not previously sold, assigned, transferred, mortgaged, pledged, or granted a security interest in the Cash Collateral, whether now due or hereafter to become due.

(e) None of the Cash Collateral due and issuing from the Property or from any part thereof has been collected for any period in excess of one month from the date hereof, and payment of any of same has not otherwise been anticipated, waived, released, discounted, set off, or otherwise discharged or compromised.

(f) Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Cash Collateral.

(g) None of the tenants under any existing Leases is in default of any of the terms thereof.

3.3 Covenants of Performance. Grantor covenants and agrees as follows:

(a) Grantor shall observe, perform, and discharge, duly and punctually, all of the obligations of the Leases on the part of Grantor to be kept, observed, and performed; and shall give prompt notice to Beneficiary of any failure on the part of Grantor to observe, perform, and discharge same.

(b) Grantor shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other

Unofficial Copy

deposits heretofore delivered to Grantor have been retained by Grantor or assigned and delivered to Beneficiary as the case may be.

(c) Grantor shall enforce the performance of each and every obligation, term, covenant, condition, and agreement in the Leases by any tenant to be performed, and shall notify Beneficiary of the occurrence of any material default under any Lease.

(d) Grantor shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Grantor or any tenant thereunder at the expense of Grantor.

3.4 Prior Approval for Actions Affecting Leases. Grantor, without the prior written consent of Beneficiary, further covenants and agrees as follows:

(a) Grantor shall not receive or collect any Cash Collateral from any present or future tenant of the Property or any part thereof for a period of more than one month in advance (whether in cash or by promissory note) nor pledge, transfer, mortgage, grant a security interest in, or otherwise encumber or assign future payments of Cash Collateral.

(b) Grantor shall not waive, forgive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Leases having a term in excess of one year of or from any obligations, covenants, conditions, and agreements by such tenant to be kept, observed, and performed, including the obligation to pay the Cash Collateral thereunder in the manner and at the place and time specified therein.

(c) Grantor shall not cancel, terminate, or consent to any surrender of any of the Leases having a term in excess of one year, nor commence any action of ejectment or any summary proceedings for dispossession of the tenant under any such Leases, nor exercise any right of recapture of the Property provided in any such Leases, nor modify or in any way alter the terms thereof.

(d) Grantor shall not lease all or any part of the Property for a term in excess of one year, nor renew or extend the term of any Leases other than month-to-month rental agreements unless an option therefor was originally so reserved by tenants in the Leases.

(e) Grantor shall not relocate any commercial tenant within the Property nor consent to any modification of the express purposes for which the Property has been leased, nor consent to any subletting of the Property or any part thereof, or to any assignment of the Leases by any commercial tenant thereunder or to any assignment or further subletting of any sublease.

Unofficial Copy

3.5 Rejection of Leases. Grantor further covenants and agrees as follows:

(a) In the event any tenant under the Leases should become the subject of any proceeding under the United States Bankruptcy Code or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Grantor covenants and agrees that in the event any of the Leases are so rejected, no damage settlement shall be made without the prior written consent of Beneficiary.

(b) Grantor will request that any check in payment of damages for rejection or termination of any such Lease will be made payable both to Grantor and Beneficiary.

(c) Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured by this Deed of Trust in such manner as Beneficiary may elect.

3.6 License to Collect Cash Collateral. As long as there shall exist no default by Grantor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant, condition, or warranty herein or in the other Loan Documents or contained in the Leases, Grantor shall have the right under a license granted hereby (but limited as provided herein) to collect, but not prior to accrual, all of the Cash Collateral arising from or out of said Leases or any renewals, extensions, and replacements thereof, or from or out of the Property or any part thereof. Grantor shall receive such Cash Collateral and hold the Cash Collateral, together with the right and license herein granted as a trust fund to be applied, and Grantor hereby covenants to so apply them, as required by Beneficiary, first to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second to the costs of insurance, maintenance, and repairs required by the terms of this Deed of Trust; third to satisfaction of all obligations under the Leases; and fourth to the payment of interest, principal, and any other sums becoming due under the Note and this Deed of Trust, before using any part of the same for any other purposes.

ARTICLE 4
REMEDIES UPON DEFAULT

4.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") under this Deed of Trust:

(a) Failure by any borrower under the Note or Loan Agreement to make any payment when due under the Note or the Loan Agreement;

(b) Failure by Grantor or any borrower under the Loan Documents to comply with or to perform any other term, obligation, covenant, or condition contained in this Deed of Trust or any of the Loan Documents which is not remedied or cured within the earlier of the time to cure such default within the Deed of Trust or the applicable Loan Documents or 15 days from the date that Beneficiary provides notice to Grantor or the borrower under

Unofficial Copy

the Loan Documents, as applicable, of such failure. Under no circumstances, however, shall Beneficiary be required to give notice of a breach of the same term, obligation, covenant, or condition and provide the opportunity to cure more than once in any calendar year;

(c) Failure by Grantor to comply with or to perform any term, obligation, convent, or condition contained in any other agreement between Beneficiary and Grantor subject to any applicable cure period specified in such agreement;

(d) Any party takes any step to foreclose or enforce an interest in any of the Trust Estate;

(e) Any warranty, representation, or statement made or furnished to Beneficiary by Grantor or on Grantor's behalf under this Deed of Trust or any of 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;

(f) The dissolution or termination of Grantor's existence as a going business, any change in ownership of 25 percent or more of the common stock of Grantor, any member withdraws from Grantor, the death of any member of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor; or

(g) Any of the preceding events occurs with respect to any guarantor of the Note or any guarantor of this Note dies, becomes incompetent, is dissolved, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note including without limitation, the validity and enforceability of Beneficiary's right to obtain a deficiency judgment against all guarantors under RCW 61.24.100(3) or fails to perform any obligation imposed under such guaranty.

4.2 Rights and Remedies on Default. Upon the occurrence of any Event of Default and at any time thereafter, Beneficiary may exercise any one or more of the following rights and remedies:

(a) The right at its option by notice to Grantor to declare the entire indebtedness secured hereby immediately due and payable.

(b) With respect to all or any part of the Trust Estate, the right to foreclose by judicial foreclosure in accordance with applicable law.

(c) The right to have Trustee exercise its power of sale and sell all or any part of the Trust Estate in accordance with the Deed of Trust Act of Washington and the Uniform Commercial Code of Washington where applicable, at public auction to the highest bidder. The power of sale conferred by this Deed of Trust and the law is not an

Unofficial Copy

exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by Trustee or unless required by applicable law.

(d) With respect to all or any part of the Trust Estate that constitutes personalty, the rights and remedies of a secured party under the Uniform Commercial Code of Washington.

(e) Subject to any limitations imposed by law, the right, without notice to Grantor, to terminate the license granted to Grantor to collect the Cash Collateral without taking possession, and to demand, collect, receive, sue for, attach and levy against the Cash Collateral in Beneficiary's name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Beneficiary, including reasonable attorney fees, to apply the net proceeds thereof, together with any funds of Grantor deposited with Beneficiary, upon any indebtedness secured hereby and in such order as Beneficiary may determine. In furtherance of this right and subject to any limitations imposed by law, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary, and payments by such tenant or user to Beneficiary in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.

(f) The right to have a receiver appointed to take possession of any or all of the Trust Estate, with the power to protect and preserve the Trust Estate and to operate the Trust Estate preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the indebtedness secured hereby. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Trust Estate exceeds the indebtedness by a substantial amount. Grantor hereby irrevocably consents to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:

(1) Use, operate, manage, control, and conduct business on the Trust Estate;

(2) Make expenditure for all maintenance, renewals, replacements, alterations, additions, and improvements to the Trust Estate as in its judgment are proper;

(3) Insure and reinsure the Trust Estate and all risks incidental to the possession, operation, and management of the Trust Estate;

Unofficial Copy

(4) Collect the Cash Collateral and any other revenues and income from the Trust Estate and apply such sums to the expenses of use, operation, and management in such priority as the receiver deems appropriate. Grantor shall promptly turn over to the receiver all documents, books, records, papers, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantor's behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions in forcible detainer;

(5) Cancel or terminate any Lease or agreement for any cause for which Grantor would be entitled to cancel the same;

(6) Extend or modify any Lease and make any new Lease on any portion of the Trust Estate. Any such instruments shall be binding upon Grantor and all persons whose interests in the Trust Estate are subordinate to this Deed of Trust, and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge, or indebtedness, satisfaction of the foreclosure decree or issuance of any certificate of sale or deed to any purchaser;

(7) Complete any construction in progress on the Property, and in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans or specifications as the receiver deems appropriate; and/or

(8) If the revenues and income are insufficient to pay expenses, the receiver may borrow such sums as the receiver deems necessary for the purposes stated in this paragraph. The amounts borrowed shall bear interest from the date of expenditure until repaid. Such sums shall become a part of the balance secured by this Deed of Trust and shall be payable by Grantor on demand.

(g) Subject to any limitations imposed by law, the right to obtain a deficiency judgment (i) in the event the net sale proceeds of any judicial foreclosure sale are insufficient to pay the entire unpaid indebtedness secured hereby, or (ii) as provided by RCW 61.24.100(3).

(h) The right to maintain an action against Grantor or any other person liable on the obligations secured by this Deed of Trust prior to a notice of trustee's sale having been given or after the discontinuance of a trustee's sale.

(i) Any other right or remedy provided in this Deed of Trust, the Note, any other Loan Documents, or under law.

Election by 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 Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Beneficiary's right to declare a default and exercise its remedies.

Unofficial Copy

4.3 Foreclosure by Power of Sale. Trustee shall have all the powers arising as a matter of law as a trustee pursuant to the Deed of Trust Act of Washington. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee said documents as Trustee may require. Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such notice(s) as then required by law, including any notices required to preserve Beneficiary's right to seek a deficiency judgment against Grantor or any guarantor. Trustee shall, after lapse of such time as may then be required by law and after notice(s) having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such notice(s), either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine, at public auction to the highest bidder in accordance with the Deed of Trust Act of Washington (and the Uniform Commercial Code of Washington if and where applicable). Any person except Trustee may bid at the Trustee's Sale. Trustee shall apply the proceeds of sale as follows: (1) to the expenses of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; and (3) the surplus, if any, shall be deposited with the clerk of the court of the county in which the sale took place all in the manner provided by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Beneficiary may appoint in writing a successor Trustee and upon the recording of such appointment in the official real property records for the county where the Deed of Trust is recorded, the successor Trustee shall be vested with all the powers of the original Trustee.

4.4 Sale of Personal Property. Beneficiary shall give Grantor reasonable notice of the time and place of any public sale of any 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 days before the time of the sale or disposition.

4.5 Due on Sale or Increase in Interest Rate on Sale.

(a) Grantor agrees and acknowledges that the indebtedness evidenced by the Note is personal to Grantor, and that Grantor's personal responsibility and/or control of the Property is a material inducement to Beneficiary to agree to enter into this transaction. Any conveyance of the whole or any part of the Property, whether by deed, contract, further encumbrance, or otherwise, lease of the same (other than a lease of any portion of the space in the improvements on the Property in the ordinary course of business without an option to purchase) without Beneficiary's prior written consent, or any transfer of capital stock, partnership interests or limited liability company interests in Grantor without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary, and Beneficiary or other holder may declare the entire unpaid balance immediately due and payable, or, at its sole option, it may consent to such conveyance, or transfer of capital stock, partnership interest, or limited liability company interest in writing and may increase the interest rate on the Note, change the maturity date of the Note, modify the terms, or impose whatever other conditions it shall deem necessary to compensate it for such increased risk. Any

UNOFFICIAL COPY

increase in interest shall entitle the holder to increase monthly payments on the indebtedness evidenced by the Note so as to retire the obligation within the original stipulated time. The execution and delivery by Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement, or other instrument whereunder any other person or corporation may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a conveyance or assignment of Grantor's interest in the Property for the purposes of this section, and shall require the prior written consent of Beneficiary.

(b) In the event Grantor shall request the consent of Beneficiary in accordance with the provisions of this Section 4.5, Grantor shall deliver a written request to Beneficiary, together with such information as Beneficiary may reasonably request regarding such conveyance, further encumbrance, lease or transfer of capital stock, partnership interest, or limited liability company interest and shall allow Beneficiary 30 days to evaluate such request. In the event Beneficiary approves such conveyance, encumbrance, lease, or transfer of capital stock, partnership interest, or limited liability company interest, Grantor shall pay Beneficiary a processing fee in an amount to be determined by Beneficiary but in no event less than Five Hundred Dollars to compensate Beneficiary for its costs in processing such request. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to any further or successive transaction.

(c) In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

4.6 Attorney Fees. In the event suit, action, or arbitration proceeding is instituted to enforce any of the terms of this Deed of Trust, Beneficiary shall be entitled to recover from Grantor such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial, on any appeal, and in any bankruptcy proceeding. All reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of any appraisal of the Property (whether or not obtained in an action for a deficiency judgment under RCW 61.24.100(3)), searching records, obtaining title reports, surveyors' reports, demanding payment, legal expenses, attorney fees, attorneys' opinions, or title insurance, whether or not any court action is involved, shall become a part of the indebtedness secured hereby, payable on demand, and shall bear interest at the Note Rate from the date of expenditure until paid.

Unofficial Copy

4.7 Surviving Obligations. The obligations and liabilities of Grantor for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards shall survive any termination, satisfaction, assignment, entry of judgment of foreclosure, delivery of trustee's deed in a nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

ARTICLE 5
MISCELLANEOUS

5.1 Governing Law. This Deed of Trust shall be governed by the laws of the State of Washington. If any term, condition, or provision of this Deed of Trust is held to be illegal, invalid, or unenforceable, such offending term, condition, or provision shall be stricken from this Deed of Trust, and the remainder of the Deed of Trust shall not be affected thereby.

5.2 Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties and their successors and assigns.

5.3 No Waiver by Beneficiary. Beneficiary shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Beneficiary. No delay or omission on the part of Beneficiary in exercising any right shall operate as a waiver of such right or any other right. A waiver by Beneficiary of a provision of the Deed of Trust shall not prejudice or constitute a waiver of Beneficiary's rights otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Beneficiary, nor any course of dealing between Beneficiary and Grantor, shall constitute a waiver of any of Beneficiary's rights or any of Grantor's obligations as to any such future transactions. Whenever the consent or approval of Beneficiary is required under this Deed of Trust, the granting of such consent or approval by Beneficiary in any instance shall not constitute continuing consent or approval to subsequent instances where such consent or approval is required and in all cases such consent or approval may be granted or withheld in the sole and absolute discretion of Beneficiary. Without limiting the foregoing, by accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

5.4 Reconveyance by Trustee. Trustee shall reconvey all or any part of the Trust Estate to Grantor, or to the person or persons legally entitled thereto, without warranty, upon the written request of Beneficiary or upon satisfaction of the obligations secured by the Deed of Trust and written request for reconveyance made by Beneficiary or the person entitled thereto and upon payment of any permitted Trustee's fee. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.5 Notices. Subject to applicable law, and except for notice required or allowed to be given in another manner, any notice required to be given under this Deed of Trust shall be given in writing, and shall be effective when actually delivered, when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class,

Unofficial Copy

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 Beneficiary'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, Grantor agrees to keep Beneficiary informed at all times of Grantor'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 Grantor, any notice given by Beneficiary to any Grantor is deemed to be notice given to all Grantors.

5.6 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.7 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

5.8 Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially unsecured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust. Further, the illegality, invalidity, or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the legality, validity, or enforceability of the remainder hereof.

5.9 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge, or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantor's request and Beneficiary shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges, and prior encumbrances, irrespective of whether such liens, charges, or encumbrances are released.

5.10 Further Assurances. At any time, and from time to time, upon request of Beneficiary, Grantor will make, execute, and deliver, or will cause to be made, executed or delivered to Beneficiary or Beneficiary's designee, and when requested by Beneficiary, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as 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 Beneficiary's sole opinion, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations under the Note, this Deed of Trust, and the Loan Documents, and (b) the liens and security interests created by this Deed of Trust as first and prior liens on the Trust Estate, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Beneficiary agrees to the contrary in writing, Grantor shall reimburse Beneficiary for all costs and expenses incurred in connection with

the matters referenced in this paragraph. If Grantor fails to do any of the things referred to this paragraph, Beneficiary may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Beneficiary as Grantor'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 Beneficiary's sole opinion, to accomplish the matters referred to in this paragraph.

5.11 No Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in any or all of the Trust Estate at any time held by or for the benefit of Beneficiary in any capacity, without the written consent of Beneficiary.

5.12 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 sought to be charged or bound by the alteration or amendment.

5.13 Joint and Several Liability. All obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Beneficiary to inquire in the powers of any of the officers, directors, partners, members, managers, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed by this Deed of Trust.

5.14 Partial Reconveyance of Property. Partial reconveyance of the Property may occur in accordance with the terms and conditions described in the Loan Agreement.

5.15 Counterparts. This Deed of Trust may be signed in any number of counterparts, each of which will be deemed to be an original, and all of which taken together will constitute the same agreement. The parties will accept a signed counterpart of this Deed of Trust transmitted by pdf as though it were an original document; provided, however, that each party so transmitting a document will be obligated to deliver the manually signed original via overnight delivery service.

5.16 **Waiver of Jury Trial. GRANTOR AND BENEFICIARY HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. GRANTOR AND BENEFICIARY EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY GIVEN.**

Unofficial Copy

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.

[Signatures follow on next page].

Unofficial Copy

Loan No.: 103001

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first above written.

GRANTOR:

Gorge Homes, LLC,
a Washington limited liability company

By: _____
Brian McKenzie, Member of Gorge Homes, LLC

State of Washington)
) ss.
County of Skamania)

I certify that I know or have satisfactory evidence that Brian McKenzie 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 the Member of Gorge Homes, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 3, 2020.

JULIE A ANDERSEN NOTARY PUBLIC COMMISSION EXPIRES 6-17-22 STATE OF WASHINGTON

_____
Notary Public for Washington

Julie A Andersen
(Printed or Stamped Name of Notary)
Residing at Carson, Washington
My appointment expires: June 17, 2022

Unofficial Copy

EXHIBIT A

Legal Description

Lot 4 of HIDDEN RIDGE SUBDIVISION, according to the recorded Plat thereof, recorded in Auditor's File Number 2018000254, in the County of Skamania, State of Washington.

Unofficial Copy