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Attorney for Secured Creditors Visio International, Inc.  
 and Y. Tito Sasaki and Janet L. Sasaki Trust

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 (Santa Rosa Division)

In re:

Case No. 24-10545-CN  
 Chapter 11

LEFEVER MATTSON, a California  
 Corporation, *et al.*,<sup>1</sup>

RS No. BRL-404

Debtor.

MOTION FOR ORDER TERMINATING  
 AUTOMATIC STAY OR REQUIRING  
 ADEQUATE PROTECTION  
 (21881, 21885, and 21889 Eighth Street E.,  
 Sonoma, California)

VISIO INTERNATIONAL, INC. AND  
 Y. TITO SASAKI AND JANET L.  
 SASAKI TRUST,

Movant,

v.

YELLOW POPLAR, LP,

DATE: August 15, 2025  
 TIME: 10:00 a.m.  
 DEPT: 215 or by Zoom Video/Zoom  
 1300 Clay Street, Oakland, CA

Debtor/Respondent.

Secured Creditors Visio International, Inc. and Y. Tito Sasaki and Janet L. Sasaki Trust

<sup>1</sup> The last four digits of LeFever Mattson's tax identification number are 7537. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/LM>. The address for service on the Debtors is 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621.

1 (collectively “Creditors”), move the Court to make an Order terminating the automatic stay for cause  
2 under 11 U.S.C. § 362(d)(1) and lack of equity under 11 U.S.C. § 362(d)(2) with respect to the interest of  
3 Debtor Yellow Poplar, LP (“Yellow Poplar”) and the estate’s interest in the real properties commonly  
4 known as 21881, 21885, and 21889 Eighth Street E., Sonoma, California (APN 128-381-028-000) (the  
5 “Properties”) and more particularly described as set forth in the deed of trust attached as Exhibit “B” to  
6 the declaration filed herewith.

7  
8 1. The Court has jurisdiction on this action pursuant to the provisions of Title 28 U.S.C.  
9 § 1334 and § 157, and 11 U.S.C. § 362.

10 2. Creditors are the obligees of a promissory note and beneficiaries of a first priority deed of  
11 trust on the Properties. The borrower on the loan is KS Mattson Partners, LP (“KS Mattson”) and KS  
12 Mattson was the trustor under the deed of trust. The deed of trust securing the note provides that  
13 attorney’s fees and costs incurred in protecting the security may be included in the outstanding balance  
14 under the note. The current principal balance of Creditors’ note is \$2,200,000.00 and the note is  
15 delinquent as of July 18, 2025, in excess of \$160,290.00.

16 3. In August 2021, Creditors sold the Properties to KS Mattson for the price of  
17 \$3,500,000.00. As part of that sales transaction, KS Mattson made a down payment of \$1,300,000.00 and  
18 Creditors carried back the balance of the financing of \$2,200,000.00.

19 4. KS Mattson originally defaulted on Creditors’ note by the failure to make payments due  
20 February 2, 2024, and all payments thereafter.

21 5. As a result of the default of KS Mattson, Redwood Trust Deed Services, Inc. (“RTD”), as  
22 substituted trustee under said deed of trust, recorded a Notice of Default and Election to Sell Under Deed  
23 of trust on July 1, 2024, in the Official Records of Sonoma County, California.

24 6. During the foreclosure, it was discovered by Creditors that the Properties had been  
25 transferred by KS Mattson to Yellow Poplar by various Grant Deeds recorded in August and October  
26

2021. Creditors recently found out that KS Mattson may have also executed a 3.923 % interest in the Properties to an individual named Risa J. Meyer (“Meyer”). Creditors did not consent to the transfer of the Properties to Yellow Poplar and/or Meyer.

7. No trustee’s sale was set for the Properties at the time when Yellow Poplar filed a Chapter 11 bankruptcy on September 12, 2024, as Case No. 24-10542-CN in the Santa Rosa Division of the Northern District of California. The same day Lefever Mattson, a California Corporation (“Lefever Mattson”) filed its bankruptcy as Case No. 24-10545-CN and the Yellow Poplar case is being jointly administrated with the Lefever Mattson corporate bankruptcy.

8. Yellow Poplar and Creditors entered into a cash collateral agreement that required Debtor to turn over a minimum of \$2,000.00 per month commencing November 1, 2024, through February 28, 2025, and to provide a new budget in February 2025.

9. On or about March 26, 2025, Yellow Poplar paid the November 2024 through March 2025 payments totaling \$10,000.00 and excess proceeds per the cash collateral agreement of \$20, 616.37. No payments were received after March 2025.

10. On November 22, 2024, an involuntary Chapter 11 petition was filed against KS Mattson as Case No. 24-10715-CN in the Santa Rosa Division of the Northern District of California. An Order for relief was later granted on June 9, 2025, in that case.

11. Post-petition interest has continued to accrue on the note from October 2024 through July 2025, a period of 10 months. As of July 18,2025, Creditors are owed \$160,292.69. An additional \$9,166.67 becomes due and owing on the second day of each month for August 2025, and each month thereafter, as well as a late charge of \$500.00 on the eighteenth day of each month where a payment is not received or is paid late.

12. The Properties are encumbered by senior delinquent property taxes in excess of \$57,990.00 according to the website for property taxes in Sonoma County as of July 14, 2025.

1           13.     The Properties are further encumbered by a junior obligation in favor of KS Mattson from  
2 trustor Yellow Poplar secured by a junior priority deed of trust with a current balance in excess of  
3 \$1,900,000.00 according to the Trustee's Sale Guarantee issued during the foreclosure of Creditors.

4           14.     Creditors are informed and believe based on an email from Yellow Poplar counsel that  
5 Yellow Poplar intends to abandon the Properties.

6           15.     There is no equity in the Properties and the Properties are not necessary for the  
7 reorganization of Yellow Poplar or KS Mattson.

8           16.     The extensive pre-petition default and post-petition default, the failure to pay property  
9 taxes, and the failure of the Properties to debt service the loan all provide "cause" to terminate the stay.  
10

11           WHEREFORE Creditors pray judgment as follows:

12           1.     For an Order granting relief from the automatic stay or requiring adequate protection;

13           2.     For an Order that terminates or vacates the automatic stay as to Debtor Yellow Poplar, and  
14 to the junior interest of KS Mattson and their estates for all purposes as it pertains to Creditors' interest in  
15 the Properties, including all steps necessary to start, continue, and complete a non-judicial foreclosure and  
16 to obtain possession of the Properties under California law after completion of foreclosure;

17           3.     For an Order waiving the fourteen-day stay period after entry of the Order under  
18 Bankruptcy Rule 4001(a)(3) and California Civil Code § 2924g(d) to the extent that it applies;

19           4.     For attorney's fees and costs incurred by Creditors for filing this Motion be included in the  
20 outstanding balance of the note as allowed under non-bankruptcy law;

21           5.     For such other and further relief as the Court may deem proper.  
22

23                   LEVINSON LAW APC

24           Dated: July 18, 2025

25                   /S/ BENJAMIN R. LEVINSON  
26                   BENJAMIN R. LEVINSON,  
Attorney for Creditors



BENJAMIN R. LEVINSON-SBN 116675  
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LEFEVER MATTSON, a California  
Corporation, *et al.*,<sup>1</sup>

RS No. BRL-404

Debtor.

DECLARATION OF Y. TITO SASAKI IN  
SUPPORT OF MOTION FOR ORDER  
TERMINATING AUTOMATIC STAY OR  
REQUIRING ADEQUATE PROTECTION  
(21881, 21885, and 21889 Eighth Street E.,  
Sonoma, California)

VISIO INTERNATIONAL, INC. AND  
Y. TITO SASAKI AND JANET L.  
SASAKI TRUST,

Movant,

v.

YELLOW POPLAR, LP,

DATE: August 15, 2025

TIME: 10:00 a.m.

Debtor/Respondent.

DEPT: 215 or by Zoom Video/Zoom  
1300 Clay Street, Oakland, CA

I, Y. TITO SASAKI, declare:

1. I have personal knowledge of the facts stated herein, except those statements made upon

<sup>1</sup> The last four digits of LeFever Mattson's tax identification number are 7537. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/LM>. The address for service on the Debtors is 6359 Auburn Blvd., Suite B, Citrus Heights, CA 95621.

1 information and belief, and as to those statements, I believe them to be true. If called as a witness, I could  
2 and would testify to them if called upon to do so.

3         2. I am the duly authorized and acting servicing agent on behalf of a certain loan held by  
4 Visio International, Inc. and Y. Tito Sasaki and Janet L. Sasaki Trust (collectively “Creditors”) and made  
5 to KS Mattson Partners, LP (“KS Mattson”). In my capacity as servicing agent of Creditors’ loan, I have  
6 access to, and I am familiar with, the books and records kept by me on behalf of Creditors. These books  
7 and records have been generated, recorded, and compiled in the ordinary course of business of my  
8 business of servicing this loan. Further, these documents were prepared at the time, or near the time that  
9 the information was received or when the events and transactions actually took place. It is my standard  
10 operating procedure to preserve these documents in a place of safekeeping on my business premises. I  
11 have personal access to these books and records and their continued safekeeping is maintained under my  
12 direction and supervision.

14         3. I have personally reviewed my records as they relate to Creditors’ loan to KS Mattson.  
15 The records reflect, among other things, the loan documents, the payments made, the payments missed,  
16 and all charges that have accrued and are accruing under the Creditors’ loan. I am a duly authorized  
17 custodian of my records and I am familiar with the subject loan and the ongoing bankruptcy herein, and I  
18 have authority to certify my records. The statements regarding the loan of Creditors to KS Mattson are  
19 based on my review of my business records.

21         4. The subject real properties securing the loan of Creditors are generally described as 21881,  
22 21885, and 21889 Eighth Street E., Sonoma, California (the “Properties”). The Properties consist of three  
23 commercial buildings and land, although the building with the address of 21885 Eighth Street E. burned  
24 down on or about February 10, 2023, and the site has not been rebuilt.

25         5. In August 2021, Creditors sold the Properties to KS Mattson for the price of  
26 \$3,500,000.00. As part of that sales transaction, KS Mattson made a down payment of \$1,300,000.00 and

1 Creditors carried back the balance of the financing of \$2,200,000.00.

2           6.       On or about August 2, 2021, KS Mattson obtained a loan from Creditors, executing and  
3 delivering to Creditors a promissory note in the principal amount of \$2,200,000.00. Said note provides  
4 for interest from the date of funding, on the unpaid balance at the initial rate of five percent (5.00 %) per  
5 annum, for the first five years, payable in monthly interest only installments of \$9,166.67 beginning  
6 September 2, 2021. The second five years the interest rate was to become prime plus 1.75%. Said note  
7 provides for payment of the entire principal and interest on or before August 2, 2031. Said note also  
8 required a principal reduction payment of \$1,100,000.00 on August 2, 2026. Said note further provides  
9 for a late charge of \$500.00 on any installment received after fifteen (15) days from the payment due date.  
10 A true and accurate copy of said note is attached hereto as Exhibit "A" and incorporated herein by  
11 reference.  
12

13           7.       Concurrent with the execution of the promissory note, and for the purpose of securing  
14 said obligation, KS Mattson executed and delivered to Creditors, as beneficiaries, a first priority deed of  
15 trust on the Properties. The deed of trust provides that attorney's fees and costs incurred as a result of  
16 protecting the security of the lender may be included in the outstanding balance under the note. Said deed  
17 of trust was recorded August 5, 2021, in the Official Records of Sonoma County, California. A true and  
18 accurate copy of said deed of trust is attached hereto as Exhibit "B" and incorporated herein by reference.  
19

20           8.       KS Mattson originally defaulted on Creditors' note by the failure to make payments due  
21 February 2, 2024, and all payments thereafter.

22           9.       As a result of the default of KS Mattson, Redwood Trust Deed Services, Inc. ("RTD"), as  
23 substituted trustee under said deed of trust, recorded a Notice of Default and Election to Sell Under Deed  
24 of trust on July 1, 2024, in the Official Records of Sonoma County, California.

25           10.      During the foreclosure, it was discovered by Creditors that the Properties had been  
26 transferred by KS Mattson to Yellow Poplar, LP ("Yellow Poplar") by various Grant Deeds recorded in



August and October 2021. Creditors recently found out that KS Mattson may have also executed a 3.923 % interest in the Properties to an individual named Risa J. Meyer (“Meyer”). Creditors did not consent to the transfer of the Properties to Yellow Poplar and/or Meyer.

11. No trustee’s sale was set for the Properties at the time when Yellow Poplar filed its Chapter 11 bankruptcy on September 12, 2024, as Case No. 24-10542-CN in the Santa Rosa Division of the Northern District of California. The same day Lefever Mattson, a California Corporation (“Lefever Mattson”) filed its bankruptcy as Case No. 24-10545-CN and the Yellow Poplar case is being jointly administrated with the Lefever Mattson corporate bankruptcy.

12. Yellow Poplar and Creditors entered into a cash collateral agreement that required Debtor to turn over a minimum of \$2,000.00 per month commencing November 1, 2024, through February 28, 2025, and to provide a new budget in February 2025.

13. On or about March 26, 2025, Yellow Poplar paid the November 2024 through March 2025 payments totaling \$10,000.00 and excess proceeds per the cash collateral agreement of \$20, 616.37. No payments were received after March 2025.

14. On November 22, 2024, an involuntary Chapter 11 petition was filed against KS Mattson as Case No. 24-10715-CN in the Santa Rosa Division of the Northern District of California. An Order for relief was later granted on June 9, 2025, in that case.

15. Post-petition interest has continued to accrue on the note from October 2024 through July 2025, a period of 10 months.

16. Actual delinquent amounts due to Creditors, as of July 18, 2025, are as follows:

Payments due for Feb. 2024- July 2025 (18 @ \$9,166.67)	\$ 165,000.06
Late Charges (18 @ \$500.00)	\$ 9,000.00
Foreclosure Fees and Costs	\$ 6,409.00
Attorney fees and costs	\$ 10,500.00

(Less Cash Collateral Received) (\$ 30,616.37)

**TOTAL** **\$ 160,292.69**

The current principal balance of the loan is \$2,200,000.00. An additional \$9,166.67 becomes due and owing on the second day of each month for August 2025, and each month thereafter, as well as a late charge of \$500.00 on the eighteenth day of each month where a payment is not received or is paid late.

17. I am informed and believe that the Properties are encumbered by senior delinquent property taxes in excess of \$57,990.00 according to the website for property taxes in Sonoma County as of July 14, 2025.

18. The Properties are further encumbered by a junior obligation in favor of KS Mattson from trustor Yellow Poplar secured by a junior priority deed of trust with a current balance in excess of \$1,900,000.00 according to the Trustee's Sale Guarantee issued during the foreclosure of Creditors.

19. Creditors are informed and believe based on an email from Yellow Poplar counsel that Yellow Poplar intends to abandon the Properties.

20. The Properties are not necessary to the reorganization of Yellow Poplar or KS Mattson.

21. The extensive pre-petition default and post-petition default, the failure to pay property taxes, and the failure of the Properties to debt service the loan all provide "cause" to terminate the stay.

22. It has been necessary for Creditors to retain the services of LEVINSON LAW APC to represent Creditors in this bankruptcy. Pursuant to the terms of the promissory note and deed of trust herein and 11 U.S.C. § 506, Creditors are entitled to recovery of their attorney fees incurred for services rendered in enforcing this obligation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on July 15, 2025, in Vineburg, California.

/S/ Y. TITO SASAKI  
Y. TITO SASAKI, Declarant

# **EXHIBIT A**

**PROMISSORY NOTE SECURED BY DEED OF TRUST****\$2,200,000.00****Date: August 2, 2021**

Citrus Heights, California

FOR VALUE RECEIVED, the undersigned, **KS MATTSON PARTNERS LP** (hereinafter Maker), a California Limited Partnership, hereby promises to pay **VISIO INTERNATIONAL, INC. and Y. TITO SASAKI AND JANET L. SASAKI TRUST** (hereinafter collectively Holder), or order, at **PO BOX 200, VINEBURG, CA 95487**, or at such other place as Holder may designate in writing, the principal sum of **TWO MILLION TWO HUNDRED THOUSAND and 00/100 DOLLARS (\$2,200,000.00)**, together with interest on the unpaid balance of this Note from time to time at an annual rate set forth below from the date of advance until **August 2, 2031**, at which time the entire remaining unpaid principal balance together with interest due thereon shall become due and payable.

**Definition of Parties:** The parties agree that **KS MATTSON PARTNERS LP** shall be designated in this Note as "Borrower" or "Note Maker" or "Maker" and **VISIO INTERNATIONAL, INC. and Y. TITO SASAKI AND JANET L. SASAKI TRUST** shall be referred to collectively as "Lender" or "Note Holder" or "Holder."

**Interest:** Interest on the unpaid balance will accrue from the date of advance at an annual rate of **FIVE PERCENT (5%)** for the first five (5) years of this ten-year Note. For the second five (5) years of the Note, the annual interest rate on the unpaid balance will be **One and Three-Quarter Percent above the Wall Street Journal Prime Rate at the 60<sup>th</sup> month of this Note (Prime plus 1.75%)**.

**Payment Form:** All sums due under this Note are payable in lawful money of the United States. Checks constitute payment only when collected. Holder may request other forms of payment such as electronic funds transfer if so desired.

**Method of Calculating Interest:** Monthly interest shall be calculated as one-twelfth (1/12) of the annual interest rate irrespective of the actual number of days in a month. The daily interest shall be computed based on a 360-day year and the actual number of days elapsed.

**Payees:** All payments and repayments under this Note shall be made to (a) Visio International, Inc. and (b) Y. Tito Sasaki and Janet L. Sasaki Trust simultaneously and separately at a ratio of \$700,000 to \$1,500,000. These figures are the principal sums each party is advancing, and the ratio is roughly 31.8% for Visio International, Inc. and 68.2% for Y. Tito Sasaki and Janet L. Sasaki Trust.

**Interest Only Payments during the First Sixty (60) Months:** For the first five years from August 2, 2021 through August 2, 2026, only the monthly interest on the unpaid principal balance of this Note ( $\$2,200,000 \times 0.05/12 = \$9,166.67$ ) shall be payable on the second day of each month beginning September 2, 2021 and ending on August 2, 2026 with the 60<sup>th</sup> monthly interest payment. Each monthly interest payment shall be made in two parts: Two thousand Nine Hundred Sixteen and 67/100 Dollars (\$2,916.67) to Visio International, Inc., and Six Thousand Two Hundred Fifty Dollars (\$6,250.00) to Y. Tito Sasaki and Janet L. Sasaki Trust.

**Principal Reduction Payment at the end of the Fifth Year:** On August 2, 2026, one half of the principal sum, in the amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) shall become due and

payable. Maker shall repay Three Hundred Fifty Thousand Dollars (\$350,000.00) to Visio International, Inc., and Seven Hundred Fifty Thousand Dollars (\$750,000.00) to Y. Tito Sasaki and Janet L. Sasaki Trust on August 2, 2026.

**Interest Only Payments during the Second Sixty (60) Months:** The Wall Street Journal Prime Rate as of July/August 2026 plus 1.75% shall be used as the new annual interest rate applicable to the unpaid balance during the second sixty months starting August 2, 2026 and ending August 2, 2031. Interest-only monthly payments shall be made on the second day of each month beginning September 2, 2026 and ending on August 2, 2031 with the final interest payment. Each monthly payment shall be made in two parts: one to Visio International, Inc., and the other to Y. Tito Sasaki and Janet L. Sasaki Trust, at a ratio of \$350,000 to \$750,000 that would be the principal balance owed to the respective party.

**Loan Maturity:** On August 2, 2031, the entire principal balance together with accrued interest shall become due and payable. Maker shall repay a principal balance of Three Hundred Fifty Thousand Dollars (\$350,000.00) with accrued interest to Visio International, Inc., and the remaining principal balance of Seven Hundred Fifty Thousand Dollars (\$750,000.00) with accrued interest to Y. Tito Sasaki and Janet L. Sasaki Trust, on August 2, 2031.

**Default:** Maker will be in default under this Note if any of the following happens: (a) Maker fails to pay any installment or other sum due under this Note when due and payable, or (b) Maker or his successor in interest, without the consent in writing of the Holder, sell, transfer or convey or permit to be sold, transferred or conveyed, his interest in the property that the securing Deed of Trust of this Note is issued on, or (c) an Event of Default as defined in the Deed of Trust takes place, or (d) Cross Default where any default by Maker as to any other loan or loans by Holder to Maker is deemed by Holder a default under this Note, or (e) any breach of any other promise or obligation in this Note or in any other instrument now or hereafter securing the indebtedness evidenced by this Note. In the event of a default, Holder may, at its option, declare this Note (including, without limitation, all accrued interest and charges) due and payable immediately regardless of the Maturity Date. Maker expressly waives notice of the exercise of this option.

**Late Charge:** Maker acknowledges that default in the payment of any sum due under this Note will result in losses and additional expenses to Holder in servicing the indebtedness evidenced by this Note, handling such delinquent payments, and meeting its other financial obligations. Maker further acknowledges that the extent of such loss and additional expenses is difficult and impractical to ascertain. Maker therefore agrees that, if any payment due under this note is not made within fifteen (15) days when due, Maker shall pay a Late Charge of Five Hundred Dollars (\$500.00) as liquidated damages without prejudicing or affecting any other rights or remedies of Holder.

**Payment Allocation:** Each payment under this Note shall be credited in the following order: first, (a) costs, fees, charges, and advances paid or incurred by Holder or payable to Holder under any provision of this Note or the Deed of Trust, in such order as Holder in its sole and absolute discretion elects; then, (b) interest payable under this Note; and finally, (c) principal under the Note.

**Interest on Interest:** If any interest payment under this Note is not paid when due, the unpaid interest shall be added to the principal of this Note, shall become and be treated as principal, and shall thereafter bear like interest.

**Attorney Fees:** Maker agrees to pay the following costs, expenses, and attorney fees paid or incurred by Holder, or adjudged by a court: (a) reasonable costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Holder

in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) reasonable costs, expenses, and attorney fees incurred to protect the lien of the Deed of Trust; and (d) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce payment of this Note or any part of it.

**Waiver:** Maker, endorsers, and all other persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and all other notices or matters of a like nature. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**Notice:** Any notice required to be provided in this Note shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; or (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next business day delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated in this Note or to such other address as party may designate by written notice to the other. All notices shall be deemed effective on the earliest of: (a) actual receipt; or (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing; or (d) if sent by overnight delivery service, on the next business day after the day of sending.

**Secured by First Deed of Trust:** This note is secured by, among other things, the First Deed of Trust. Assignment of Leases and Rents, Fixture Filing, and Security Agreement (the Deed of Trust) of even date herewith made by Maker, as Trustor, for the benefit of Holder, as Beneficiary.

**Forbearance Not a Waiver:** If Holder delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Holder rights or of any breach, default, or failure of condition under this Note. No waiver by Holder of any of its rights or any such breach, default, or failure of condition shall be effective unless the waiver is expressly stated in a writing by Holder.

**Assignment:** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder; provided, however, that Maker may not assign this Note or any proceeds of it, or assign or delegate any of its rights or obligations, without Holder's prior written consent in each instance. Holder in its sole discretion may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or consent of Maker. If Holder transfers this note, subsequent Holder becomes a Holder-in-due-course who may then take this Note free of personal defenses that the note Maker might raise against the original note Holder in a collection action. Personal defenses include all defenses except an incapacity because of infancy, an incapacity that renders the transaction a nullity, duress, illegality, misrepresentation that induces the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms, discharge in insolvency proceedings, and any other discharge of which the Holder has notice when the Holder takes the instrument.

**Governing Law:** This Note shall be construed and enforceable according to the laws of the State of California for all purposes.

**Usury:** All agreements between Maker and Holder are expressly limited so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, or retention of the money to be advanced under this Note exceeds the highest lawful rate permissible under



applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or the Deed of Trust securing this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validly prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Holder shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note, or if such excessive portion of interest exceeds the unpaid principal balance under this Note, the net excess shall be refunded to Maker. This provision shall control every other provision of all agreements between Maker and Holder.

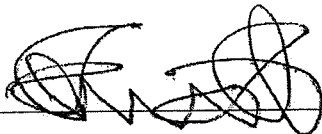
**Time is of the Essence:** Time is of the essence with respect to all obligations of Maker under this Note.

Executed at Citrus Heights, California, on the 2 day of Aug, 2021

**Note Maker:**

**KS MATTSON PARTNERS LP**, a California Limited Partnership

By: \_\_\_\_\_



Name: **Kenneth W. Mattson, Managing Partner**

Mailing Address; PO Box 5490, Vacaville, CA 95696

# **EXHIBIT B**



**\*\*This document was electronically submitted  
to the County of Sonoma for recording\*\***

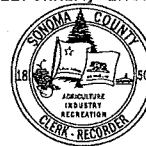
**2021089500**

Official Records of Sonoma County  
Deva Marie Proto  
08/05/2021 12:35 PM  
CONSUMERS TITLE COMPANY OF CALIFORNIA, INC.

TRD 44 Pgs

4

Fee: \$185.00



**RECORDING REQUESTED BY**

NAME: CONSUMER'S TITLE

**WHEN RECORDED MAIL TO:**

NAME: VISIO INTERNATIONAL INC.

ADDRESS: PO BOX 200

CITY/STATE/ZIP: VINEBURG, CA 95487

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

(SPACE ABOVE FOR RECORDER'S USE)

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE  
FILING, AND SECURITY AGREEMENT; REQUEST FOR NOTICE**

**(DOCUMENT TITLE)**

Exempt from fee per GC 27388.1 (a)  
(2); recorded concurrently "in connec-  
tion with" a transfer subject to the  
imposition of documentary transfer  
tax (DTT).

SEPARATE PAGE, PURSUANT TO CA. GOV'T. CODE 27361.6

APN: 128-381-028

APN: 128-381-028  
Recording Requested by  
Consumers Title Company

After Recording Return to

Visio International Inc  
PO Box 280  
Vincburg, CA 95487

Loan No.: 128-381-028

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND  
SECURITY AGREEMENT; REQUEST FOR NOTICE**

NOTICE TO BORROWER: THE LOAN SECURED BY THIS DEED OF TRUST PROVIDES  
FOR A VARIABLE INTEREST RATE AND BALLOON PAYMENT AT MATURITY

NOTICE TO BORROWER: THE LOAN SECURED BY THIS DEED OF TRUST PROVIDES  
FOR CHANGES IN THE INTEREST RATE AND/OR MONTHLY PAYMENT, WHICH  
MAY RESULT IN UNPAID INTEREST BEING ADDED TO THE PRINCIPAL BALANCE  
OF THE LOAN.

This Deed of Trust, Assignment of Leases and Rents, Fixture Filing, and Security Agreement (Deed of Trust) is made as of **August 2, 2021**, among **KS MATTSON PARTNERS LP**, a California limited partnership, as trustor (Borrower), whose address is **PO BOX 5490, VACAVILLE CALIFORNIA 95696**; **Stewart Title of Sacramento**, a California corporation, as trustee (Trustee); and **VISIO INTERNATIONAL, INC.**, a California Corporation / **Y. Tito Sasaki and Janet L. Sasaki Trust**, as beneficiary (Lender).

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower **GRANTS, BARGAINS, SELLS, AND CONVEYS** to Trustee the Mortgaged Property, with power of sale and right of entry, subject only to the Permitted Encumbrances, to have and to hold the Mortgaged Property to Trustee, its successors in trust, and the Trustee's assigns forever, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Mortgaged Property to Trustee against anyone lawfully claiming it or any part of it; provided, however, that if the Indebtedness is paid in full as and when it becomes due and payable and the Obligations are performed on or before the date they are to be performed and discharged, then the liens, security interests, estates,

Page 1 of 41

and rights granted by the Loan Documents shall terminate; otherwise, they shall remain in full force and effect. As additional security for the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower grants to Lender a security interest in the Personalty, Fixtures, Leases, and Rents under Article Nine of the Uniform Commercial Code in effect in the State of California. Borrower further grants, bargains, conveys, assigns, transfers, and sets over to Trustee, acting as both a trustee and an agent for Lender under this Deed of Trust, a security interest in and to all of Borrower's right, title, and interest in, to, and under the Personalty, Fixtures, Leases, Rents, and Mortgaged Property (to the extent characterized as personal property) to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

Borrower agrees to execute and deliver, from time to time, such further instruments, including, but not limited to, security agreements, assignments, and UCC financing statements, as may be requested by Lender to confirm the lien of this Deed of Trust on any of the Mortgaged Property.

Borrower further irrevocably grants, transfers, and assigns to Lender the Rents. This assignment of Rents is to be effective to create a present security interest in existing and future Rents of the Mortgaged Property under California Civil Code §2938.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS DEED OF TRUST, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

1. Definitions. For purposes of this Deed of Trust, each of the following terms shall have the following respective meanings:

1.1. "Attorney Fees." Any and all attorney fees (including the allocated cost of in-house counsel), paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, arbitration, and litigation at the pretrial, trial, and appellate levels, and in any bankruptcy proceedings, and attorney costs and expenses incurred or paid by Lender in protecting its interests in the Mortgaged Property, including, but not limited to, any action for waste, and enforcing its rights under this Deed of Trust.

1.2. "Borrower." The named Borrower in this Deed of Trust and the obligor under the Note, whether or not named as Borrower in this Deed of Trust, and subject to *paragraph 19* and *paragraph 20* of this Deed of Trust, the heirs, legatees, devisees, administrators, executors, successors in interest to the Mortgaged Property, and the assigns of any such person.

1.3. "Default Rate." The Default Rate as defined in the Note.

1.4. "Event of Default." An Event of Default as defined in *paragraph 19* of this Deed of Trust.

1.5. "Environmental Laws." Any Governmental Requirements pertaining to health, industrial hygiene, or the environment, including, without limitation, the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 USC §§9601–9675); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC §§6901–6992k); the Hazardous Materials Transportation Act (49 USC §§5101–5128); the Federal Water Pollution Control Act (33 USC §§1251–1387); the Clean Air Act (42 USC §§7401–7671q); the Toxic Substances Control Act (15 USC §§2601–2692); the Refuse Act (33 USC §§407–426p); the Emergency Planning and Community Right-To-Know Act (42 USC §§11001–11050); the Safe Drinking Water Act (42 USC §§300f–300j); the California Hazardous Waste Treatment Reform Act of 1995 (Stats 1995, ch 638 (SB 1222-Calderon)); the California Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Stats 1993, ch 418 (SB 1082-Calderon)); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & S C §§25300–25395.45); the California Expedited Remedial Action Reform Act of 1994 (Health & S C §§25396–25399.2); and the Porter-Cologne Water Quality Control Act (Wat C §§13000–16104).

1.6. “Fixtures.” All right, title, and interest of Borrower in and to all materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of California, including the California Uniform Commercial Code. “Fixtures” includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under Governmental Requirements.

1.7. “Governmental Authority.” Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.8. “Governmental Requirements.” Any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments, and orders of any Governmental Authority.

1.9. “Hazardous Substance.” Any and all (a) substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in CERCLA, RCRA, and the Hazardous Materials Transportation Act (49 USC §§5101–5128), and in the regulations promulgated under those laws; (b) substances defined as “hazardous wastes” in California Health and Safety Code §25117 and in the regulations promulgated under that law; (c) substances defined as “hazardous substances” in California Civil Code §2929.5; (d) substances listed in the United States Department of Transportation Table (49 CFR §172.101 and amendments); (e) substances defined as “medical wastes” in the Medical Waste Management Act (Chapter 6.1 of the California Health and Safety Code); (f) asbestos-containing materials; (g) polychlorinated biphenyl; (h) underground storage tanks, whether empty, filled, or partially filled with any substance; (i) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any such mixture; and (j) such other substances, materials, and wastes that are or become regulated under applicable local, state, or federal law, or that are classified as hazardous or toxic under any Governmental Requirements or that, even if not so regulated, are known to pose a hazard to the health and safety of the occupants of the Mortgaged Property or of real property adjacent to it.

1.10. “Impositions.” All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit

development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Deed of Trust may be assessed, levied, or imposed on the Mortgaged Property or on its ownership, use, occupancy, or enjoyment.

1.11. "Improvements." Any and all buildings, structures, improvements, fixtures, and appurtenances now and later placed on the Mortgaged Property, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, which is used to provide or supply air cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal, or other services; and all elevators, escalators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains, curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, pools, spas, pool and spa operation and maintenance equipment and apparatus, and trees and plants located on the Mortgaged Property, all of which, including replacements and additions, shall conclusively be deemed to be affixed to and be part of the Mortgaged Property conveyed to Trustee under this Deed of Trust.

1.12. "Indebtedness." The principal of, interest on, and all other amounts and payments due under or evidenced by the following:

1.12.1. The Note (including, without limitation, the prepayment premium, late payment, and other charges payable under the Note);

1.12.2. This Deed of Trust and all other Loan Documents;

1.12.3. All funds later advanced by Lender to or for the benefit of Borrower under any provision of any of the Loan Documents;

1.12.4. Any future loans or amounts advanced by Lender to Borrower when evidenced by a written instrument or document that specifically recites that the Obligations evidenced by such document are secured by the terms of this Deed of Trust, including, but not limited to, funds advanced to protect the security or priority of the Deed of Trust; and

1.12.5. Any amendment, modification, extension, rearrangement, restatement, renewal, substitution, or replacement of any of the foregoing.

1.12.6. That certain promissory note dated **August 2, 2021**, in the amount of **\$2,200,000 USD** given by Borrower to Lender for real property address 21881/21885/21889 8<sup>th</sup> Street East, Sonoma CA 95476 with an assigned APN of 128-381-028.

1.12.7 also applies to this Deed of Trust is the cross-collateralized separate loan and promissory note dated **August 2, 2021** in the amount of **\$1,600,000 USD** given by Borrower to Lender for real property address 22001 Eighth Street East, Sonoma CA 95476 with an assigned APN of 128-381-027.



1.13. "Land." The real estate or any interest in it described in Exhibit A attached to this Deed of Trust and made a part of it, together with all Improvements and Fixtures and all rights, titles, and interests appurtenant to it.

1.14. "Leases." Any and all leases, subleases, licenses, concessions, or other agreements (written or verbal, now or later in effect) that grant a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Mortgaged Property, and all other agreements, including, but not limited to, utility contracts, maintenance agreements, and service contracts that in any way relate to the use, occupancy, operation, maintenance, enjoyment, or ownership of the Mortgaged Property, except any and all leases, subleases, or other agreements under which Borrower is granted a possessory interest in the Land. - SEE SCHEDULE OF LEASES ATTACHED HERETO -

1.15. "Legal Requirement(s)." Collectively, (a) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Borrower, any guarantor (with respect to the Indebtedness or the Mortgaged Property), or the Mortgaged Property, including, but not limited to, those concerning its ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction, (b) Borrower's or guarantor's presently or subsequently effective bylaws and articles of incorporation, or any instruments establishing any partnership, limited partnership, joint venture, trust, limited liability company, or other form of business association (if either, both, or all, by any of same), (c) any and all Leases and other contracts (written or oral) of any nature to which Borrower or any guarantor may be bound, and (d) any and all restrictions, reservations, conditions, easements, or other covenants or agreements now or later of record affecting the Mortgaged Property.

1.16. "Lender." The named Lender in this Deed of Trust and the owner and holder (including a pledgee) of any Note, Indebtedness, or Obligations secured by this Deed of Trust, whether or not named as Lender in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such person.

1.17. "Loan." The extension of credit made by Lender to Borrower under the terms of the Loan Documents.

1.18. "Loan Documents." Collectively, this Deed of Trust, the Note, and all other instruments and agreements required to be executed by Borrower or any guarantor in connection with the Loan.

1.19. "Mortgaged Property." The Land, Improvements, Fixtures, Personalty, Leases, and Rents, together with:

1.19.1. All right, title, and interest (including any claim or demand or demand in law or equity) that Borrower now has or may later acquire in or to such Mortgaged Property; all easements, rights, privileges, tenements, hereditaments, and appurtenances belonging or in any way appertaining to the Mortgaged Property; all of the estate, right, title, interest, claim, demand, reversion, or remainder of Borrower in or to the Mortgaged Property, either at law or in equity, in possession or expectancy, now or later acquired; all crops growing or to be grown on the Mortgaged Property; all development rights or credits and air rights; all water and water rights

(whether or not appurtenant to the Mortgaged Property) and shares of stock pertaining to such water or water rights, ownership of which affects the Mortgaged Property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Mortgaged Property and all royalties and profits from any such rights or shares of stock; all right, title, and interest of Borrower in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part of it that Borrower now owns or at any time later acquires and all adjacent lands within enclosures or occupied by buildings partly situated on the Mortgaged Property;

1.19.2. All intangible Mortgaged Property and rights relating to the Mortgaged Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services, installations, refunds due Borrower, trade names, trademarks, and service marks;

1.19.3. All of the right, title, and interest of Borrower in and to the land lying in the bed of any street, road, highway, or avenue in front of or adjoining the Land;

1.19.4. Any and all awards previously made or later to be made by any Governmental Authority to the present and all subsequent owners of the Mortgaged Property that may be made with respect to the Mortgaged Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, or any other injury to or decrease of value of the Mortgaged Property, which award or awards are assigned to Lender and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of any such award or awards from the authorities making them and to give proper receipts and acquittances for them, and to apply them as provided in *paragraph 5 and paragraph 10*;

1.19.5. All certificates of deposit of Borrower in Lender's possession and all bank accounts of Borrower with Lender and their proceeds, and all deposits of Borrower with any Governmental Authority and/or public utility company that relate to the ownership of the Mortgaged Property;

1.19.6. All Leases of the Mortgaged Property or any part of it now or later entered into and all right, title, and interest of Borrower under such Leases, including cash or securities deposited by the tenants to secure performance of their obligations under such Leases (whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due immediately before the expiration of such terms), all rights to all insurance proceeds and unearned insurance premiums arising from or relating to the Mortgaged Property, all other rights and easements of Borrower now or later existing pertaining to the use and enjoyment of the Mortgaged Property, and all right, title, and interest of Borrower in and to all declarations of covenants, conditions, and restrictions as may affect or otherwise relate to the Mortgaged Property;

1.19.7. Any and all proceeds of any insurance policies covering the Mortgaged Property, whether or not such insurance policies were required by Lender as a condition of making the loan secured by this Deed of Trust or are required to be maintained by Borrower as provided below in this Deed of Trust; which proceeds are assigned to Lender, and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of such insurance policies from the insurers issuing the same and to give proper receipts and acquittances for such policies, and to apply the same as provided below;

1.19.8. If the Mortgaged Property includes a leasehold estate, all of Borrower's right, title, and interest in and to the lease, more particularly described in Exhibit A attached to this Deed of Trust (the Leasehold) including, without limitation, the right to surrender, terminate, cancel, waive, change, supplement, grant subleases of, alter, or amend the Leasehold;

1.19.9. All plans and specifications for the Improvements; all contracts and subcontracts relating to the Improvements; all deposits (including tenants' security deposits; provided, however, that if Lender acquires possession or control of tenants' security deposits Lender shall use the tenants' security deposits only for such purposes as Governmental Requirements permit), funds, accounts, contract rights, instruments, documents, general intangibles, and notes or chattel paper arising from or in connection with the Land or other Mortgaged Property; all permits, licenses, certificates, and other rights and privileges obtained in connection with the Land or other Mortgaged Property; all soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, letters of credit, bonds, surety bonds, any other intangible rights relating to the Land and Improvements, surveys, and other reports, exhibits, or plans used or to be used in connection with the construction, planning, operation, or maintenance of the Land and Improvements and all amendments and modifications; all proceeds arising from or by virtue of the sale, lease, grant of option, or other disposition of all or any part of the Land, Fixtures, Personalty, or other Mortgaged Property (consent to same is not granted or implied); and all proceeds (including premium refunds) payable or to be payable under each insurance policy relating to the Land, Fixtures, Personalty, or other Mortgaged Property;

1.19.10. All trade names, trademarks, symbols, service marks, and goodwill associated with the Mortgaged Property and any and all state and federal applications and registrations now or later used in connection with the use or operation of the Mortgaged Property;

1.19.11. All tax refunds, bills, notes, inventories, accounts and charges receivable, credits, claims, securities, and documents of all kinds, and all instruments, contract rights, general intangibles, bonds and deposits, and all proceeds and products of the Mortgaged Property;

1.19.12. All money or other personal property of Borrower (including, without limitation, any instrument, deposit account, general intangible, or chattel paper, as defined in Division 9 of the California Uniform Commercial Code) previously or later delivered to, deposited with, or that otherwise comes into Lender's possession;

1.19.13. All accounts, contract rights, chattel paper, documents, instruments, books, records, claims against third parties, money, securities, drafts, notes, proceeds, and other items relating to the Mortgaged Property;

1.19.14. All construction, supply, engineering, and architectural contracts executed and to be executed by Borrower for the construction of the Improvements; and

1.19.15. All proceeds of any of the foregoing.

As used in this Deed of Trust, "Mortgaged Property" is expressly defined as meaning all or, when the context permits or requires, any portion of it and all or, when the context permits or requires, any interest in it.



1.20. "Note." The Promissory Note payable by Borrower to the order of Lender in the principal amount of **TWO MILLION TWO HUNDRED THOUSAND dollars (\$2,200,000 USD)**, evidencing the Loan, in such form as is acceptable to Lender, together with any and all rearrangements, extensions, renewals, substitutions, replacements, modifications, restatements, and amendments to the Promissory Note.

1.21. "Obligation(s)." Any and all of the covenants, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower to Lender or Trustee as set forth in the Loan Documents; any lease, sublease, or other agreement under which Borrower is granted a possessory interest in the Land; each obligation, covenant, and agreement of Borrower in the Loan Documents or in any other document executed by Borrower in connection with the loan(s) secured by this Deed of Trust whether set forth in or incorporated into the Loan Documents by reference; each and every monetary provision of all covenants, conditions, and restrictions, if any, pertaining to the Mortgaged Property and on Lender's written request, the enforcement by Borrower of any covenant by third parties to pay maintenance or other charges, if they have not been paid, or valid legal steps taken to enforce such payment within *90 days* after such written request is made; if the Mortgaged Property consists of or includes a leasehold estate, each obligation, covenant, and agreement of Borrower arising under, or contained in, the instrument(s) creating any such leasehold; all agreements of Borrower to pay fees and charges to Lender whether or not set forth in this Deed of Trust; and charges, as allowed by law, when they are made for any statement regarding the obligations secured by this Deed of Trust.

1.22. "Permitted Encumbrance(s)." At any particular time, (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; (b) liens, easements, encumbrances, and restrictions on the Mortgaged Property that are allowed by Lender to appear in Schedule B, with Parts I and II of an ALTA title policy to be issued to Lender following recordation of the Deed of Trust; and (c) liens in favor of or consented to in writing by Lender.

1.23. "Person." Natural persons, corporations, partnerships, unincorporated associations, joint ventures, and any other form of legal entity.

1.24. "Personalty." All of the right, title, and interest of Borrower in and to all tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to, water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents, minerals, crops, and timber (as those terms are defined in the California Uniform Commercial Code) and that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, the Improvements, Fixtures, or on other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or Improvements, extensions, renewals, and enlargements and proceeds of the Land or Improvements, substitutions for, and income and profits from, the Land or Improvements. The Personalty includes, but is not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems); building materials, air conditioning, heating, refrigerating, electronic monitoring, entertainment,

recreational, maintenance, extermination of vermin or insects, dust removal, refuse and garbage equipment; vehicle maintenance and repair equipment; office furniture (including tables, chairs, planters, desks, sofas, shelves, lockers, and cabinets); safes, furnishings, appliances (including ice-making machines, refrigerators, fans, water heaters, and incinerators); rugs, carpets, other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, other window coverings; lamps, chandeliers, other lighting fixtures; office maintenance and other supplies; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants' security deposits, licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Mortgaged Property that constitute personal property under the California Uniform Commercial Code.

1.25. "Rents." All rents, issues, revenues, income, proceeds, royalties, profits, license fees, prepaid municipal and utility fees, bonds, and other benefits to which Borrower or the record title owner of the Mortgaged Property may now or later be entitled from or which are derived from the Mortgaged Property, including, without limitation, sale proceeds of the Mortgaged Property; any room or space sales or rentals from the Mortgaged Property; and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting, or otherwise enjoying or using the Mortgaged Property.

1.26. "Water Rights." All water rights of whatever kind or character, surface or underground, appropriative, decreed, or vested, that are appurtenant to the Mortgaged Property or otherwise used or useful in connection with the intended development of the Mortgaged Property.

Any terms not otherwise defined in this Deed of Trust shall have the meaning given them in the Loan Agreement dated **August 2, 2021**, between Borrower and Lender.

2. Repair and Maintenance of Mortgaged Property. Borrower shall (a) keep the Mortgaged Property in good condition and repair; (b) not substantially alter, remove, or demolish the Mortgaged Property or any of the Improvements except when incident to the replacement of Fixtures, equipment, machinery, or appliances with items of like kind; (c) restore and repair to the equivalent of its original condition all or any part of the Mortgaged Property that may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence, and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration under *paragraph 5* of this Deed of Trust; (d) pay when due all claims for labor performed and materials furnished in connection with the Mortgaged Property and not permit any mechanics' or materialman's lien to arise against the Mortgaged Property or furnish a loss or liability bond against such mechanics' or materialman's lien claims; (e) comply with all laws affecting the Mortgaged Property or requiring that any alterations, repairs, replacements, or improvements be made on it; (f) not commit or permit waste on or to the Mortgaged Property, or commit, suffer, or permit any act or violation of law to occur on it; (g) not abandon the Mortgaged Property; (h) cultivate, irrigate, fertilize, fumigate, and prune in accordance with prudent agricultural practices; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify Lender in writing of any condition at or on the Mortgaged Property that may have a significant

and measurable effect on its market value; (k) if the Mortgaged Property is rental property, generally operate and maintain it in such manner as to realize its maximum rental potential; and (l) do all other things that the character or use of the Mortgaged Property may reasonably render necessary to maintain it in the same condition (reasonable wear and tear expected) as existed at the date of this Deed of Trust.

3. Use of Mortgaged Property. Unless otherwise required by Governmental Requirements or unless Lender otherwise consents in writing, Borrower shall not allow changes in the use of the Mortgaged Property from that which is contemplated by Borrower and Lender at the time of execution of this Deed of Trust, as specified in the loan application and the Loan Documents. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Lender's prior written consent.

#### 4. Insurance.

4.1. Casualty Insurance. Borrower shall at all times keep the Mortgaged Property insured for the benefit of Trustee and Lender as follows, despite Governmental Requirements that may detrimentally affect Borrower's ability to obtain or may materially increase the cost of such insurance coverage:

4.1.1. Against damage or loss by fire and such other hazards (including lightning, windstorm, hail, explosion, riot, acts of striking employees, civil commotion, vandalism, malicious mischief, aircraft, vehicle, and smoke) as are covered by the broadest form of extended coverage endorsement available from time to time, in an amount not less than the full insurable value (as defined in *paragraph 4.9* of the Mortgaged Property, with a deductible amount not to exceed an amount satisfactory to Lender;

4.1.2. Rent loss or business interruption or use and occupancy insurance on such basis and in such amounts and with such deductibles as are satisfactory to Lender;

4.1.3. Against damage or loss by flood if the Land is located in an area identified by the Secretary of Housing and Urban Development or any successor or other appropriate authority (governmental or private) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, modified, supplemented, or replaced from time to time, on such basis and in such amounts as Lender may require;

4.1.4. Against damage or loss from (a) sprinkler system leakage and (b) boilers, boiler tanks, heating and air conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, on such basis and in such amounts as Lender may require;

4.1.5. During any alteration, construction, or replacement of the Improvements, or any substantial portion of it, a Builder's All Risk policy with extended coverage with course of construction and completed value endorsements, for an amount at least equal to the full insurable value of the Improvements, and workers' compensation, in statutory amounts, with provision for replacement with the coverage described in *paragraph 4.1*, without gaps or lapsed coverage, for any completed portion of the Improvements; and

4.1.6. Against damage or loss by earthquake, in an amount and with a deductible satisfactory to Lender, if such insurance is required by Lender in the exercise of its business judgment in light of the commercial real estate practices existing at the time the insurance is issued and in the County where the Land is located.

4.1.7. Against damage or loss from perils of terrorism and acts of terrorism as long as such insurance coverage is available at commercially reasonable rates.

4.2. Liability Insurance. Borrower shall procure and maintain workers' compensation insurance for Borrower's employees and comprehensive general liability insurance covering Borrower, Trustee, and Lender against claims for bodily injury or death or for damage occurring in, on, about, or resulting from the Mortgaged Property, or any street, drive, sidewalk, curb, or passageway adjacent to it, in standard form and with such insurance company or companies and in an amount of at least \$5,000,000 combined single limit, or such greater amount as Lender may require, which insurance shall include completed operations, product liability, and blanket contractual liability coverage that insures contractual liability under the indemnifications set forth in this Deed of Trust and the Loan Documents (but such coverage or its amount shall in no way limit such indemnification).

4.3. Other Insurance. Borrower shall procure and maintain such other insurance or such additional amounts of insurance, covering Borrower or the Mortgaged Property, as (a) may be required by the terms of any construction contract for the Improvements or by any Governmental Authority, (b) may be specified in any other Loan Documents, or (c) may be *reasonably* required by Lender from time to time.

4.4. Form of Policies. All insurance required under this *paragraph 4* shall be fully paid for and nonassessable. The policies shall contain such provisions, endorsements, and expiration dates as Lender from time to time reasonably requests and shall be in such form and amounts, and be issued by such insurance companies doing business in the State of California, as Lender shall approve in Lender's sole and absolute discretion. Unless otherwise expressly approved in writing by Lender, each insurer shall have a Best Rating of Class A, Category VIII, or better. All policies shall (a) contain a waiver of subrogation endorsement; (b) provide that the policy will not lapse or be canceled, amended, or materially altered (including by reduction in the scope or limits of coverage) without at least 30 days prior written notice to Lender; (c) with the exception of the comprehensive general liability policy, contain a mortgagee's endorsement (438 BFU Endorsement or equivalent), and name Lender and Trustee as insureds; and (d) include such deductibles as Lender may approve. If a policy required under this paragraph contains a co-insurance or overage clause, the policy shall include a stipulated value or agreed amount endorsement acceptable to Lender.

4.5. Duplicate Originals or Certificates. Duplicate original policies evidencing the insurance required under this *paragraph 4* and any additional insurance that may be purchased on the Mortgaged Property by or on behalf of Borrower shall be deposited with and held by Lender and, in addition, Borrower shall deliver to Lender (a) receipts evidencing payment of all premiums on the policies and (b) duplicate original renewal policies or a binder with evidence satisfactory to Lender of payment of all premiums at least 30 days before the policy expires. In lieu of the duplicate original policies to be delivered to Lender under this *paragraph 4.5*. Borrower may



deliver an underlier of any blanket policy, and Borrower may also deliver original certificates from the issuing insurance company, evidencing that such policies are in full force and effect and containing information that, in Lender's reasonable judgment, is sufficient to allow Lender to ascertain whether such policies comply with the requirements of this paragraph.

4.6. Increased Coverage. If Lender determines that the limits of any insurance carried by Borrower are inadequate or that additional coverage is required, Borrower shall, within *10 days* after written notice from Lender, procure such additional coverage as Lender may require in Lender's sole and absolute discretion.

4.7. No Separate Insurance. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this *paragraph 4* unless endorsed in favor of Trustee and Lender as required by this paragraph and otherwise approved by Lender in all respects.

4.8. Transfer of Title. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the Obligations and the Indebtedness, all right, title, and interest of Borrower in and to all insurance policies required under this *paragraph 4* or otherwise then in force with respect to the Mortgaged Property and all proceeds payable under, and unearned premiums on, such policies shall immediately vest in the purchaser or other transferee of the Mortgaged Property.

4.9. Replacement Cost. For purposes of this *paragraph 4* the term "full insurable value" means the actual cost of replacing the Mortgaged Property in question, without allowance for depreciation, as calculated from time to time (but not more often than once every calendar year) by the insurance company or companies holding such insurance or, at Lender's request, by appraisal made by an appraiser, engineer, architect, or contractor proposed by Borrower and approved by said insurance company or companies and Lender. Borrower shall pay the cost of such appraisal.

4.10. Approval Not Warranty. No approval by Lender of any insurer may be construed to be a representation, certification, or warranty of its solvency and no approval by Lender as to the amount, type, or form of any insurance may be construed to be a representation, certification, or warranty of its sufficiency.

4.11. Lender's Right to Obtain. Borrower shall deliver to Lender original policies or certificates evidencing such insurance at least *30 days* before the existing policies expire. If any such policy is not so delivered to Lender or if any such policy is canceled, whether or not Lender has the policy in its possession, and no reinstatement or replacement policy is received before termination of insurance, Lender, without notice to or demand on Borrower, may (but is not obligated to) obtain such insurance insuring only Lender and Trustee with such company as Lender may deem satisfactory, and pay the premium for such policies, and the amount of any premium so paid shall be charged to and promptly paid by Borrower or, at Lender's option, may be added to the Indebtedness. Borrower acknowledges that, if Lender obtains insurance, it is for the sole benefit of Lender and Trustee, and Borrower shall not rely on any insurance obtained by Lender to protect Borrower in any way.

4.12. Duty to Restore After Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) results in damage to or loss or destruction of the Mortgaged Property, Borrower shall immediately give notice of such loss or damage to Lender and, if Lender so instructs, shall promptly, at Borrower's sole cost and expense, regardless of whether any insurance proceeds will be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately before the damage, loss, or destruction.

#### 5. Condemnation and Insurance Proceeds.

5.1. Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, who shall hold them in a *non-interest-bearing general account or general account bearing interest at a rate paid on like accounts by Lender*, regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the Mortgaged Property or any part of it, or in connection with any transaction financed by funds lent to Borrower by Lender and secured by this Deed of Trust, or in connection with or affecting the Mortgaged Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. If, in Lender's reasonable judgment, Borrower is not diligently pursuing collection of such proceeds or taking other actions to adequately protect the Mortgaged Property, then Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement of such action. Borrower shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of \$5,000 or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Mortgaged Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance. Borrower covenants and agrees with Lender, at Lender's request, to make, execute, and deliver, at Borrower's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards, causes of action, or claims of damages or proceeds to Lender free, clear, and discharged of any and all encumbrances of any kind or nature.

5.2. Insurance Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Lender may become entitled with respect to the Mortgaged Property if any damage or injury occurs to the Mortgaged Property, other than by a partial condemnation or other partial taking of the Mortgaged Property, shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with their recovery and disbursement, and shall then be applied as follows:

5.2.1. Lender shall consent to the application of such payments to the restoration of the Mortgaged Property so damaged only if Borrower has met all the following conditions (a breach of one of which shall constitute a default under this Deed of Trust, the Note, and any Loan

Documents): (a) Borrower is not in default under any of the terms, covenants, and conditions of the Loan Documents; (b) all then-existing Leases affected in any way by such damage will continue in full force and effect; (c) Lender is satisfied that the insurance or award proceeds, plus any sums added by Borrower, shall be sufficient to fully restore and rebuild the Mortgaged Property under then current Governmental Requirements; (d) within *60 days* after the damage to the Mortgaged Property, Borrower presents to Lender a restoration plan satisfactory to Lender and any local planning department, which includes cost estimates and schedules; (e) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed in accordance with plans and specifications and drawings submitted to Lender within *30 days* after receipt by Lender of the restoration plan and thereafter approved by Lender, which plans, specifications, and drawings shall not be substantially modified, changed, or revised without Lender's prior written consent; (f) within *3 months* after such damage, Borrower and a licensed contractor satisfactory to Lender enter into a fixed price or guaranteed maximum price contract satisfactory to Lender, providing for complete restoration in accordance with such restoration plan for an amount not to exceed the amount of funds held or to be held by Lender; (g) all restoration of the Improvements so damaged or destroyed shall be made with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed before such damage or destruction; (h) Lender reasonably determines that there is an identified source (whether from income from the Mortgaged Property, rental loss insurance, or another source) sufficient to pay all debt service and operating expenses of the Mortgaged Property during its restoration as required above; and (i) any and all funds that are made available for restoration and rebuilding under this *paragraph 5* shall be disbursed, at Lender's sole and absolute discretion to Lender, through Lender, the Trustee, or a title insurance or trust company satisfactory to Lender, in accordance with standard construction lending practices, including a reasonable fee payable to Lender from such funds and, if Lender requests, mechanics lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Borrower, or in any other manner approved by Lender in Lender's sole and absolute discretion; or

5.2.2. If fewer than all conditions (a) through (i) in *paragraph 5.2.1* are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (a) to the payment or prepayment, with any applicable prepayment premium, of any Indebtedness secured by this Deed of Trust in such order as Lender may determine, or (b) to the reimbursement of Borrower's expenses incurred in the rebuilding and restoration of the Mortgaged Property. If Lender elects under this *paragraph 5.2.2* to make any funds available to restore the Mortgaged Property, then all of conditions (a) through (i) in *paragraph 5.2.1* shall apply, except for such conditions that Lender, in its sole and absolute discretion, may waive.

5.3. Material Loss Not Covered. If any material part of the Mortgaged Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then current Governmental Requirements, is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit with Lender, within *30 days* after Lender's request, the amount of the loss not so covered.

5.4. Total Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a total

condemnation or other total taking of the Mortgaged Property shall be paid over to Lender and shall be applied first to reimbursement of all Lender's costs and expenses in connection with their recovery, and shall then be applied to the payment of any Indebtedness secured by this Deed of Trust in such order as Lender may determine, until the Indebtedness secured by this Deed of Trust has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the Indebtedness secured by this Deed of Trust shall be paid to Borrower as its interest may then appear.

5.5. Partial Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments ("funds") that Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a partial condemnation or other partial taking of the Mortgaged Property, unless Borrower and Lender otherwise agree in writing, shall be divided into two portions, one equal to

the principal balance of the Note at the time of receipt of such funds and the other equal to the amount by which such funds exceed the principal balance of the Note at the time of receipt of such funds.

The first such portion shall be applied to the sums secured by this Deed of Trust, whether or not then due, including but not limited to principal, accrued interest, and advances, and in such order or combination as Lender may determine, with the balance of the funds paid to Borrower. Any dispute as to the fair market value of the Mortgaged Property shall be settled by arbitration in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association.

5.6. No Cure of Waiver of Default. Any application of such amounts or any portion of it to any Indebtedness secured by this Deed of Trust shall not be construed to cure or waive any default or notice of default under this Deed of Trust or invalidate any act done under any such default or notice.

6. Taxes and Other Sums Due. Borrower shall promptly pay, satisfy, and discharge: (a) all Impositions affecting the Mortgaged Property before they become delinquent; (b) such other amounts, chargeable against Borrower or the Mortgaged Property, as Lender reasonably deems necessary to protect and preserve the Mortgaged Property, this Deed of Trust, or Lender's security for the performance of the Obligations; (c) all encumbrances, charges, and liens on the Mortgaged Property, with interest, which in Lender's judgment are, or appear to be, prior or superior to the lien of this Deed of Trust or all costs necessary to obtain protection against such lien or charge by title insurance endorsement or surety company bond; (d) such other charges as Lender deems reasonable for services rendered by Lender at Borrower's request; and (e) all costs, fees, and expenses incurred by Lender in connection with this Deed of Trust, whether or not specified in this Deed of Trust.

On Lender's request, Borrower shall promptly furnish Lender with all notices of sums due for any amounts specified in the preceding *clauses 6(a) through (e)*, and, on payment, with written evidence of such payment. If Borrower fails to promptly make any payment required under this *paragraph 6*, Lender may (but is not obligated to) make such payment. Borrower shall notify Lender immediately on receipt by Borrower of notice of any increase in the assessed value of the



Mortgaged Property and agrees that Lender, in Borrower's name, may (but is not obligated to) contest by appropriate proceedings such increase in assessment. Without Lender's prior written consent, Borrower shall not allow any lien inferior to the lien of this Deed of Trust to be perfected against the Mortgaged Property and shall not permit any improvement bond for any unpaid special assessment to issue.

7. Leases of Mortgaged Property by Borrower. At Lender's request, Borrower shall furnish Lender with executed copies of all Leases of the Mortgaged Property or any portion of it then in force. All Leases later entered into by Borrower are subject to Lender's prior review and approval and must be acceptable to Lender in form and content. Each Lease must specifically provide, inter alia, that (a) it is subordinate to the lien of this Deed of Trust; (b) the tenant attorns to Lender (and Borrower consents to any such attornment), such attornment to be effective on Lender's acquisition of title to the Mortgaged Property; (c) the tenant agrees to execute such further evidence of attornment as Lender may from time to time request; (d) the tenant's attornment shall not be terminated by foreclosure; and (e) Lender, at Lender's option, may accept or reject such attornment. If Borrower learns that any tenant proposes to do, or is doing, any act that may give rise to any right of setoff against rent, Borrower shall immediately (i) take measures reasonably calculated to prevent the accrual of any such right of setoff; (ii) notify Lender of all measures so taken and of the amount of any setoff claimed by any such tenant; and (iii) within 10 days after the accrual of any right of setoff against rent, reimburse any tenant who has acquired such right, in full, or take other measures that will effectively discharge such setoff and ensure that rents subsequently due shall continue to be payable without claim of setoff or deduction.

At Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all Leases of the Mortgaged Property, and all security deposits made by tenants in connection with such Leases. On assignment to Lender of any such Lease, Lender shall succeed to all rights and powers of Borrower with respect to such Lease, and Lender, in Lender's sole and absolute discretion, shall have the right to modify, extend, or terminate such Lease and to execute other further leases with respect to the Mortgaged Property that is the subject of such assigned Lease.

8. Right to Collect and Receive Rents. Despite any other provision of this Deed of Trust, Lender grants permission to Borrower to collect and retain the Rents of the Mortgaged Property as they become due and payable; however, such permission to Borrower shall be automatically revoked on default by Borrower in payment of any Indebtedness secured by this Deed of Trust or in the performance of any of the Obligations, and Lender shall have the rights set forth in California Civil Code §2938 regardless of whether declaration of default has been delivered to Trustee as provided in *paragraph 21* of this Deed of Trust, and without regard to the adequacy of the security for the Indebtedness secured by this Deed of Trust. Failure of or discontinuance by Lender at any time, or from time to time, to collect any such Rents shall not in any manner affect the subsequent enforcement by Lender at any time, or from time to time, of the right, power, and authority to collect these Rents. The receipt and application by Lender of all such Rents under this Deed of Trust, after execution and delivery of declaration of default and demand for sale as provided in this Deed of Trust or during the pendency of trustee's sale proceedings under this Deed of Trust, shall neither cure such breach or default nor affect such sale proceedings, or any sale made under them, but such Rents, less all costs of operation, maintenance, collection, and

Attorney Fees, when received by Lender, may be applied in reduction of the entire Indebtedness from time to time secured by this Deed of Trust, in such order as Lender may decide. Nothing in this Deed of Trust, nor the exercise of Lender's right to collect, nor an assumption by Lender of any tenancy, lease, or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to, any such tenancy, lease, or option, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, or option.

If the Rents of the Mortgaged Property are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become Indebtedness of Borrower to Lender secured by this Deed of Trust. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable on notice from Lender to Borrower requesting such payment and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to Governmental Requirements, in which event the amounts shall bear interest at the highest rate that may be collected from Borrower under Governmental Requirements.

Borrower expressly understands and agrees that Lender will have no liability to Borrower or any other person for Lender's failure or inability to collect Rents from the Mortgaged Property or for failing to collect such Rents in an amount that is equal to the fair market rental value of the Mortgaged Property. Borrower understands and agrees that neither the assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies under this Deed of Trust shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment, or operation of all or any portion of it, unless and until Lender, in person or by agent, assumes actual possession of it. Nor shall appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part of it by such receiver be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment, or operation of all or any portion of it.

During an Event of Default, any and all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with Borrower's funds and property, but shall be promptly paid over to Lender.

9. Funds for Taxes and Insurance. If Borrower is in default under this Deed of Trust or any of the Loan Documents, regardless of whether the default has been cured, then Lender may at any subsequent time, at its option to be exercised on *30 days* written notice to Borrower, require Borrower to deposit with Lender or its designee, at the time of each payment of an installment of interest or principal under the Note, an additional amount sufficient to discharge the obligations of Borrower under *paragraphs 4 and 6* of this Deed of Trust as they become due. The calculation of the amount payable and of the fractional part of it to be deposited with Lender shall be made by Lender in its sole and absolute discretion. These amounts shall be held by Lender or its designee not in trust and not as agent of Borrower and shall not bear interest, and shall be applied to the payment of any of the Obligations under the Loan Documents in such order or priority as Lender shall determine. If at any time within *30 days* before the due date of these obligations the amounts then on deposit shall be insufficient to pay the obligations under *paragraphs 4 and 6* in

full, Borrower shall deposit the amount of the deficiency with Lender within *10 days* after Lender's demand. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the excess in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing in this paragraph shall be deemed to affect any right or remedy of Lender under any other provision of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness secured by this Deed of Trust. Lender shall have no obligation to pay insurance premiums or taxes except to the extent the fund established under this paragraph is sufficient to pay such premiums or taxes, to obtain insurance, or to notify Borrower of any matters relative to the insurance or taxes for which the fund is established under this paragraph.

Lender or its designee shall hold all amounts so deposited as additional security for the sums secured by this Deed of Trust. Lender may, in its sole and absolute discretion and without regard to the adequacy of its security under this Deed of Trust, apply such amounts or any portion of it to any Indebtedness secured by this Deed of Trust, and such application shall not be construed to cure or waive any default or notice of default under this Deed of Trust.

If Lender requires deposits to be made under this *paragraph 9*, Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements for insurance premiums, and statements for any other obligations referred to above as soon as Borrower receives such documents.

If Lender sells or assigns this Deed of Trust, Lender shall have the right to transfer all amounts deposited under this *paragraph 9* to the purchaser or assignee. After such a transfer, Lender shall be relieved and have no further liability under this Deed of Trust for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

10. Assignment of Causes of Action, Awards, and Damages. All causes of action, and all sums due or payable to Borrower for injury or damage to the Mortgaged Property, or as damages incurred in connection with the transactions in which the Loan secured by this Deed of Trust was made, including, without limitation, causes of action and damages for breach of contract, fraud, concealment, construction defects, or other torts, or compensation for any conveyance in lieu of condemnation, are assigned to Lender, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit against the Indebtedness secured by this Deed of Trust. Borrower shall notify Lender immediately on receipt by Borrower of notice that any such sums have become due or payable and, immediately on receipt of any such sums, shall promptly remit such sums to Lender.

After deducting all expenses, including Attorney Fees, incurred by Lender in recovering or collecting any sums under this *paragraph 10*, Lender may apply or release the balance of any funds received by it under this paragraph, or any part of such balance, as it elects. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it under this paragraph and may make any compromise or settlement in such action whatsoever. Borrower covenants that it shall execute and deliver to Lender such further assignments of any such compensation awards, damages, or causes of action as Lender

may request from time to time. If Lender fails or does not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the action or proceeding at its own expense and risk.

11. Defense of Deed of Trust; Litigation. Borrower shall give Lender immediate written notice of any action or proceeding (including, without limitation, any judicial, whether civil, criminal, or probate, or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents. Despite any other provision of this Deed of Trust, Borrower agrees that, if Lender or Trustee reasonably believes that Borrower is not taking adequate steps to protect the Mortgaged Property, Lender or Trustee may (but is not obligated to) commence, appear in, prosecute, defend, compromise, and settle, in Lender's or Borrower's name, and as attorney-in-fact for Borrower, and incur necessary costs and expenses, including Attorney Fees in so doing, any action or proceeding, whether a civil, criminal, or probate judicial matter, nonjudicial proceeding, arbitration, or other alternative dispute resolution procedure, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Mortgaged Property, this Deed of Trust, Lender's security for performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, and that if neither Lender nor Trustee elects to do so, Borrower shall commence, appear in, prosecute, and defend any such action or proceeding. Borrower shall pay all costs and expenses of Lender and Trustee, including costs of evidence of title and Attorney Fees, in any such action or proceeding in which Lender or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise, and whether or not the interest of Lender or Trustee in the Mortgaged Property is directly questioned in such action or proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Mortgaged Property and any action brought by Lender to foreclose this Deed of Trust or to enforce any of its terms or provisions.

12. Borrower's Failure to Comply With Deed of Trust. If Borrower fails to make any payment or do any act required by this Deed of Trust, or if there is any action or proceeding (including, without limitation, any judicial or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Mortgaged Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Note or this Deed of Trust, Lender or Trustee may (but is not obligated to) (a) make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Mortgaged Property, this Deed of Trust, or Lender's security for the performance of Borrower's Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, Lender and Trustee being authorized to enter on the Mortgaged Property for any such purpose; and (b) in exercising any such power, pay necessary expenses, retain attorneys, and pay Attorney Fees incurred in connection with such action, without notice to or demand on Borrower and without releasing Borrower from any Obligations or Indebtedness.

13. Sums Advanced to Bear Interest and to Be Secured by Deed of Trust. At Lender's request, Borrower shall immediately pay any sums advanced or paid by Lender or Trustee under any provision of this Deed of Trust or the other Loan Documents. Until so repaid, all such sums and



all other sums payable to Lender or Trustee shall be added to, and become a part of, the Indebtedness secured by this Deed of Trust and bear interest from the date of advancement or payment by Lender or Trustee at the same rate as provided in the Note, unless payment of interest at such rate would be contrary to Governmental Requirements. All sums advanced by Lender under this Deed of Trust or the other Loan Documents, whether or not required to be advanced by Lender under the terms of this Deed of Trust or the other Loan Documents, shall conclusively be deemed to be mandatory advances required to preserve and protect this Deed of Trust and Lender's security for the performance of the Obligations and payment of the Indebtedness, and shall be secured by this Deed of Trust to the same extent and with the same priority as the principal and interest payable under the Note.

14. Inspection of Mortgaged Property. In addition to any rights Lender may have under California Civil Code §2929.5, Lender may make, or authorize other persons, including, but not limited to, appraisers and prospective purchasers at any foreclosure sale commenced by Lender, to enter on or inspect the Mortgaged Property at reasonable times and for reasonable durations. Borrower shall permit all such entries and inspections to be made as long as Lender has given Borrower written notice of such inspection at least *24 hours* before the entry and inspection.

15. Financial Statements; Estoppel Certificates.

15.1. Borrower's Financial Statements. On receipt of Lender's written request and without expense to Lender, Borrower shall furnish to Lender (a) an annual statement of the operation of the Mortgaged Property prepared and certified by Borrower, showing in reasonable detail satisfactory to Lender total Rents received and total expenses together with an annual balance sheet and profit and loss statement, within *120 days* after the close of each fiscal year of Borrower, beginning with the fiscal year first ending after the date of recordation of this Deed of Trust; (b) within *30 days* after the end of each calendar quarter (March 31, June 30, September 30, December 31) interim statements of the operation of the Mortgaged Property showing in reasonable detail satisfactory to Lender total Rents and other income and receipts received and total expenses for the previous quarter, certified by Borrower; and (c) copies of Borrower's annual state and federal income tax returns within *30 days* after filing them. Borrower shall keep accurate books and records, and allow Lender, its representatives and agents, on notice, at any time during normal business hours, access to such books and records regarding acquisition, construction, and development of the Mortgaged Property, including any supporting or related vouchers or papers, shall allow Lender to make extracts or copies of any such papers, and shall furnish to Lender and its agents convenient facilities for the audit of any such statements, books, and records.

Borrower agrees to pay Lender for audits in an amount no greater than \$500 per annum.

15.2. Recordkeeping. Borrower shall keep adequate records and books of account in accordance with generally accepted accounting principles and practices and shall permit Lender, by its agents, accountants, and attorneys, to examine Borrower's records and books of account and to discuss the affairs, finances, and accounts of Borrower with the officers of Borrower, at such reasonable times as Lender may request.

15.3. Guarantors' Financial Statements. Except to the extent already required by *paragraph 15.1*, Borrower, its controlling shareholders, and all guarantors of the Indebtedness, if any, shall deliver to Lender with reasonable promptness after the close of their respective fiscal years a balance sheet and profit and loss statement, prepared by an independent certified public accountant satisfactory to Lender, setting forth in each case, in comparative form, figures for the preceding year, which statements shall be accompanied by the unqualified opinion of such accountant as to their accuracy. Throughout the term of this Deed of Trust, Borrower and any guarantor shall deliver, with reasonable promptness, to Lender such other information with respect to Borrower or guarantor as Lender may from time to time request. All financial statements of Borrower or guarantor shall be prepared in accordance with generally accepted accounting principles and practices applied on a consistent basis and shall be delivered in duplicate.

Documents and information submitted by Borrower to Lender are submitted confidentially, and Lender shall not disclose them to third parties and shall limit access to them to what is necessary to service the loan, accomplish the normal administrative, accounting, tax-reporting, and other necessary functions, to sell all or any part of the loan and to report such information as required to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Internal Revenue Service, and similar entities.

15.4. Estoppel Certificates. Within *10 days* after Lender's request for such information, Borrower shall execute and deliver to Lender, and to any third party designated by Lender, in recordable form, a certificate of the principal financial or accounting officer of Borrower, dated within *3 days* after delivery of such statements, or the date of such request, as the case may be, reciting that the Loan Documents are unmodified and in full force and effect, or that the Loan Documents are in full force and effect as modified and specifying all modifications asserted by Borrower. Such certificate shall also recite the amount of the Indebtedness and cover other matters with respect to the Indebtedness or Obligations as Lender may reasonably require, the date(s) through which payments due on the Indebtedness have been paid and the amount(s) of any payments previously made on the Indebtedness. The certificate shall include a detailed statement of any right of setoff, counterclaim, or other defense that Borrower contends exists against the Indebtedness or the Obligations; a statement that such person knows of no Event of Default or prospective Event of Default that has occurred and is continuing, or, if any Event of Default or prospective Event of Default has occurred and is continuing, a statement specifying the nature and period of its existence and what action Borrower has taken or proposes to take with respect to such matter; and, except as otherwise specified, a statement that Borrower has fulfilled all Obligations that are required to be fulfilled on or before the date of such certificate.

15.5. Failure to Deliver Estoppel Certificate. If Borrower fails to execute and deliver the certificate required by *paragraph 15.4* within such *10-day* period, (a) the Loan Documents shall, as to Borrower, conclusively be deemed to be either in full force and effect, without modification, or in full force and effect, modified in the manner and to the extent specified by Lender, whichever Lender reasonably and in good faith may represent; (b) the Indebtedness shall, as to Borrower, conclusively be deemed to be in the amount specified by Lender and no setoffs, counterclaims, or other defenses exist against the Indebtedness; and (c) Borrower shall conclusively be deemed to have irrevocably constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver such certificate to any third party.

15.6. Reliance on Estoppel Certificate. Borrower and Lender expressly agree that any certificate executed and delivered by Borrower, or any representation in lieu of a certificate made by Lender under *paragraph 15.5*, may be relied on by any prospective purchaser or any prospective assignee of any interest of Lender in the Note and other Indebtedness secured by this Deed of Trust or in the Mortgaged Property, and by any other person, without independent investigation or examination, to verify the accuracy, reasonableness, or good faith of the recitals in the certificate or representation.

15.7. No Waiver of Default or Rights. Lender's exercise of any right or remedy provided by this *paragraph 15* shall not constitute a waiver of, or operate to cure, any default by Borrower under this Deed of Trust, or preclude any other right or remedy that is otherwise available to Lender under this Deed of Trust or Governmental Requirements.

16. Uniform Commercial Code Security Agreement. This Deed of Trust is intended to be and shall constitute a security agreement under the California Uniform Commercial Code for any of the Personalty specified as part of the Mortgaged Property that, under Governmental Requirements, may be subject to a security interest under the California Uniform Commercial Code, and Borrower grants to Lender a security interest in those items. Borrower authorizes Lender to file financing statements in all states, counties, and other jurisdictions as Lender may elect, without Borrower's signature if permitted by law. Borrower agrees that Lender may file this Deed of Trust, or a copy of it, in the real estate records or other appropriate index or in the Office of the Secretary of State of the State of California and such other states as the Lender may elect, as a financing statement for any of the items specified above as part of the Mortgaged Property. Any reproduction of this Deed of Trust or executed duplicate original of this Deed of Trust, or a copy certified by a County Recorder in the State of California, or of any other security agreement or financing statement, shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, at Lender's request, any UCC financing statements, as well as any extensions, renewals, and amendments, and copies of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the Personalty. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases of such statements, and shall pay all reasonable costs and expenses of any record searches for financing statements that Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest in the items, including any replacements and additions.

On any Event of Default, Lender shall have the remedies of a secured party under the California Uniform Commercial Code and, at Lender's option, may also invoke the remedies in *paragraph 21* of this Deed of Trust as to such items. In exercising any of these remedies, Lender may proceed against the items of Mortgaged Property and any items of Personalty separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the California Uniform Commercial Code or of the remedies in *paragraph 21* of this Deed of Trust.

17. Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under California Commercial Code §9502(c), as amended or recodified from time to time, covering any portion of the Mortgaged Property that now is or later may become a fixture attached to the Mortgaged Property or to any Improvement.

18. Waiver of Statute of Limitations. Borrower waives the right to assert any statute of limitations as a defense to the Loan Documents and the Obligations secured by this Deed of Trust, to the fullest extent permitted by Governmental Requirements.

19. Events of Default. The term Event of Default as used in this Deed of Trust means the occurrence or happening, at any time and from time to time, of any one or more of the following:

19.1. Payment of Indebtedness. Borrower fails to pay any installment of interest and/or principal under the Note or any other Indebtedness when due and such failure continues for more than 10 days after the date such payment was due and payable whether on maturity, the date stipulated in any Loan Document, by acceleration, or otherwise.

19.2. Performance of Obligations. The failure, refusal, or neglect to perform and discharge fully and timely any of the Obligations as and when required, and the continuance of such failure for 90 days after Lender gives written notice of such failure to Borrower.

19.3. Judgment. If any final judgment, order, or decree is rendered against Borrower or a guarantor and is not paid or executed on, or is not stayed by perfection of an appeal or other appropriate action, such as being bonded, or is not otherwise satisfied or disposed of to Lender's satisfaction within 30 days after entry of the judgment, order, or decree.

19.4. Voluntary Bankruptcy. If Borrower or any guarantor (a) seeks entry of an order for relief as a debtor in a proceeding under the Bankruptcy Code; (b) seeks, consents to, or does not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (c) files a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or any other competent jurisdiction; (d) makes a general assignment for the benefit of its creditors; or (e) states in writing its inability to pay its debts as they mature.

19.5. Involuntary Bankruptcy. If (a) a petition is filed against Borrower or any guarantor seeking relief under any bankruptcy, arrangement, reorganization, or other debtor relief laws of the United States or any state or other competent jurisdiction; or (b) a court of competent jurisdiction enters an order, judgment, or decree appointing, without the consent of Borrower or any guarantor, a receiver or trustee for it, or for all or any part of its property; and (c) such petition, order, judgment, or decree is not discharged or stayed within 90 days after its entry.

19.6. Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without implying Lender's consent to the existence, placing, creating, or permitting of any lien or security interest) institutes foreclosure or other proceedings to enforce its remedies thereunder and any such proceedings are not stayed or discharged within 60 days after institution of such foreclosure proceedings.

19.7. Sale, Lease, Encumbrance, or Other Transfer. Any sale, lease, exchange, assignment, conveyance, encumbrance (other than a Permitted Encumbrance), transfer of possession, or other disposition of all or any portion of the Land or Improvements or any of Borrower's interest in the Land or Improvement without Lender's prior written consent, or any sale, lease, exchange, assignment, conveyance, encumbrance (other than a Permitted Encumbrance), or other disposition of any portion of the Personalty, without Lender's prior written consent.



19.8. Title and Lien Priority. If Borrower's title to any or all of the Mortgaged Property or the status of this Deed of Trust as a first and prior lien and security interest on the Mortgaged Property is endangered in any manner, and Borrower fails to cure the same on Lender's demand; provided, however, that Borrower shall not be in default under this paragraph if Borrower is diligently pursuing a contest or cure of such title or lien issue and Borrower has posted adequate security to protect Lender's rights, interest, and priority under this Deed of Trust, as determined by Lender.

19.9. Other Defaults. The occurrence of an Event of Default or any default, as defined or described in the other Loan Documents, or the occurrence of a default on any Indebtedness or Obligations.

19.10. Levy on Assets. A levy on any of the assets of Borrower or any guarantor, and such levy is not stayed or abated within 60 days after such levy.

19.11. Breach of Representations. The breach of any representation, warranty, or covenant in this Deed of Trust or other Loan Documents.

19.12. Default Under Prior Deed of Trust, Security Instrument, or Lien. The failure to pay on a timely basis, or the occurrence of any other default under any note, deed of trust, contract of sale, lien, charge, encumbrance, or security interest encumbering or affecting the Mortgaged Property and having priority over the lien of this Deed of Trust.

19.13. Borrower's Right to Cure. If for more than 30 days after receipt of notice from Lender, Borrower remains in default under any term, covenant, or condition of this Deed of Trust, the Note or any of the other Loan Documents other than as specified in paragraph 19.1.1 *et seq*; provided, however, that if the cure of any such default cannot reasonably be made within 30 days and Borrower promptly and diligently commences to cure such default within 30 days, then the period to cure shall be deemed extended for up to an additional 60 days after Lender's default notice as long as Borrower diligently and continuously proceeds to cure such default to Lender's satisfaction.

## 20. Acceleration on Transfer or Encumbrance.

20.1. Acceleration on Transfer or Encumbrance of Mortgaged Property. If Borrower sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Mortgaged Property, or any interest in it, or suffers its title to, or any interest in, the Mortgaged Property to be divested, whether voluntarily or involuntarily; or if title to such Mortgaged Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Lender's prior written consent, then Lender, at Lender's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust, including those in *paragraph 21*.

20.3. Transfer to Limited Liability Company. As long as Borrower gives Lender at least 30 days written notice of the proposed transfer and agrees to reimburse Lender for all out-of-pocket costs and expenses incurred in connection with such transfer and if Lender consents in writing, which consent may not be unreasonably withheld, the due-on-sale provision set forth in

*paragraph 20.1* shall not apply to a one-time transfer of the Mortgaged Property from Borrower to a limited liability company or other similar single-purpose entity created by Borrower that is domiciled in the United States and is wholly owned by Borrower and Borrower agrees it shall remain liable on the Loan.

20.3. Permitted Assumptions. Despite the provisions of *paragraph 20.1*, Lender shall not exercise its right to require immediate payment in full of all sums secured by this Deed of Trust on transfer of all or part of the Mortgaged Property, provided that the Mortgaged Property and Borrower's successor in interest qualify for assumption under Lender's then current appraisal and underwriting standards, and further provided that Borrower's successor in interest agrees in writing to all terms required by Lender and the conditions and obligations set forth in this Deed of Trust, and payment of Lender's standard assumption fee, and further provided that the Note is not in default at the time of the sale or transfer and has not been delinquent more than once in any calendar year. In no event, however, shall Lender consent to more than one transfer of the Property secured by this Deed of Trust. Beneficiary's consent to any such transfer shall not relieve Borrower of liability to repay the Note that this Deed of Trust secures.

20.4. Assumption of Loan. Despite the provisions of *paragraph 20.1*, Lender shall not exercise its right to require immediate payment in full of all sums secured by this Deed of Trust on transfer of all or part of the Mortgaged Property, provided that the Mortgaged Property and Borrower's successor in interest qualify for assumption according to Lender's then current appraisal and underwriting standards, and further provided that Borrower's successor in interest agrees in writing to all of the terms required by Lender and the conditions and obligations set forth in this Deed of Trust, and pays Lender's standard assumption fee, and further provided that the Note is not in default at the time of the sale or transfer and has not been delinquent more than once in any calendar year. Lender's consent to any such transfer shall not relieve Borrower of liability to repay the Note that this Deed of Trust secures.

21. Acceleration and Sale on Default. If an Event of Default occurs, Lender, at its option, in addition to other remedies provided at law, may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written affidavit or declaration of default and demand for sale, executed by Lender and reciting facts demonstrating such default by Borrower, together with a written notice of default and election to sell the Mortgaged Property. Lender shall also deposit with Trustee the Note, this Deed of Trust, and documents evidencing any additional advances or expenditures secured by this Deed of Trust. On receipt by Trustee of such affidavit or declaration of default and such notice of default and election to sell, Trustee shall accept such election to sell as true and conclusive of all facts and statements in such affidavit or declaration of default and shall cause such notice of default and election to sell to be recorded as required by Governmental Requirements. On the expiration of such period as may then be required by Governmental Requirements following recordation of such notice of default, and after notice of sale has been given in the manner and for the period required by Governmental Requirement, Trustee, without demand on Borrower, shall sell the Mortgaged Property at the time and place fixed in such notice of sale, either in whole or in separate parcels, and in such order as Trustee may determine or Lender may direct (Borrower waives any right it may have under Governmental Requirements to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; provided, however, that Lender may offset its bid at such sale to the extent of the full amount

owed to Lender under the Loan Documents, including, without limitation, Trustee's fees, expenses of sale, and costs, expenses, and Attorney Fees incurred by or on behalf of Lender in connection with collecting, litigating, or otherwise enforcing any right under the Loan Documents. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement made at the initial time and place of sale, and from time to time later by public announcement made at the time and place of sale fixed by the preceding postponement. Trustee shall deliver to the purchaser at such public auction its deed conveying the Mortgaged Property sold, but without any covenant or warranty, express or implied. The recital in such deed of any matter of fact concerning notices shall be conclusive proof of its truthfulness. Any person, including Borrower, Trustee, or Lender, may purchase at such sale.

The proceeds or avails of any sale made under or by virtue of this Deed of Trust, together with any other sums secured by this Deed of Trust, which then may be held by the Trustee or Lender or any other person, shall be applied as follows:

FIRST: To the payment of the costs and expenses of such sale, including Trustee's fees, costs of title evidence, Attorney Fees, and reasonable compensation to Lender and its agents and consultants, and of any judicial proceedings in which the same costs and expenses of sale may be made, and of all expenses, liabilities, and advances made or incurred by the Trustee or Lender under this Deed of Trust, together with interest at the rate set forth in the Note on all advances made by the Trustee or Lender and all taxes or assessments, except any taxes, assessments, or other charges subject to which the Mortgaged Property was sold.

SECOND: To the payment of the whole amount then due, owing, or unpaid on the Note for interest and principal, with interest on the unpaid principal at the Default Rate (as defined in the Note), from the due date of any such payment of principal until the same is paid.

THIRD: To the payment of any other Indebtedness required to be paid by Borrower under any provision of this Deed of Trust, the Note, or any of the other Loan Documents.

FOURTH: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive it.

22. Obligation to Notify Lender of Bankruptcy, Insolvency, Transfer, or Encumbrance. Borrower shall notify Lender in writing, at or before the time of the occurrence of any event described in *paragraphs 19 and 20* of this Deed of Trust, of such event and shall promptly furnish Lender with any and all information on such event that Lender may request.

23. Waiver of Marshaling. Despite the existence of interests in the Mortgaged Property other than that created by this Deed of Trust, and despite any other provision of this Deed of Trust, if Borrower defaults in paying the Indebtedness or in performing any Obligations, Lender shall have the right, in Lender's sole and absolute discretion, to establish the order in which the Mortgaged Property will be subjected to the remedies provided in this Deed of Trust and to establish the order in which all or any part of the Indebtedness secured by this Deed of Trust is satisfied from the proceeds realized on the exercise of the remedies provided in this Deed of Trust. Borrower and any person who now has or later acquires any interest in the Mortgaged Property with actual or constructive notice of this Deed of Trust waives any and all rights to

require a marshaling of assets in connection with the exercise of any of the remedies provided in this Deed of Trust or otherwise provided by Governmental Requirements.

#### 24. Environmental Matters.

24.1. Borrower's Representations and Warranties. Borrower represents and warrants to Lender that:

24.1.8. The use that Borrower makes and intends to make of the Mortgaged Property shall not result in the disposal or release of any Hazardous Substances on, in, or to the Mortgaged Property.

24.1.9. Borrower shall not cause any violation of any Environmental Laws, nor permit any tenant of any portion of the Mortgaged Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Mortgaged Property.

24.1.10. Neither Borrower nor any third party shall use, generate, manufacture, store, release, discharge, or dispose of any Hazardous Substance on, under, or about the Mortgaged Property, or transport any Hazardous Substance to or from the Mortgaged Property.

24.2. Survival of Representations and Warranties. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date of this instrument to the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure), and these representations and warranties shall survive such release.

24.3. Notice to Lender. Borrower shall give prompt written notice to Lender of:

24.3.1. Any proceeding or inquiry by any Governmental Authority (including, without limitation, the California State Department of Health Services) regarding the presence or threatened presence of any Hazardous Substance on the Mortgaged Property;

24.3.2. All claims made or threatened by any third party against Borrower or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance;

24.3.3. Any notice given to Borrower under California Civil Code §851(b); and

24.3.4. Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause it or any part of it to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Mortgaged Property under any Environmental Laws.

24.4. Lender's Right to Join Legal Actions. Lender shall have the right, at its option, but at Borrower's sole cost and expense, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated by or against Borrower or the Mortgaged Property in connection with any Environmental Laws.

24.5. Borrower's Indemnity. Borrower shall indemnify, defend, and hold harmless Lender, its directors, officers, employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Mortgaged Property, or any order, consent decree, or settlement relating to the cleanup of a Hazardous Substance, or any claims of loss, damage, liability, expense, or injury relating to or arising from, directly or indirectly, any disclosure by Lender to anyone of information, whether true or not, relative to a Hazardous Substance or Environmental Law violation, including, without limitation, Attorney Fees. This indemnity shall survive the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure).

25. Trustee. The Trustee shall be deemed to have accepted the terms of this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The Trustee shall not be obligated to notify any party to this Deed of Trust of any pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender, or Trustee is a party, unless such sale relates to or reasonably might affect the Mortgaged Property, this Deed of Trust, Lender's security for the payment of the Indebtedness and the performance of the Obligations, or the rights or powers of Lender or Trustee under the Loan Documents, or unless such action or proceeding has been instituted by Trustee against the Mortgaged Property, Borrower, or Lender.

26. Power of Trustee to Reconvey or Consent. At any time, without liability and without notice to Borrower, on Lender's written request and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting (a) the personal liability of Borrower or any other person for the payment of the Indebtedness secured by this Deed of Trust, or (b) the lien of this Deed of Trust on the remainder of the Mortgaged Property as security for the repayment of the full amount of the Indebtedness then or later secured by this Deed of Trust, or (c) any right or power of Lender or Trustee with respect to the remainder of the Mortgaged Property, Trustee may (i) reconvey or release any part of the Mortgaged Property from the lien of this Deed of Trust; (ii) approve the preparation or filing of any map or plat of the Mortgaged Property; (iii) join in the granting of any easement burdening the Mortgaged Property; or (iv) enter into any extension or subordination agreement affecting the Mortgaged Property or the lien of this Deed of Trust.

27. Duty to Reconvey. On Lender's written request reciting that all sums secured hereby have been paid, surrender of the Note and this Deed of Trust to Trustee for cancellation and retention by Trustee, and payment by Borrower of any reconveyance fees customarily charged by Trustee, Trustee shall reconvey, without warranty, the Mortgaged Property then held by Trustee under this Deed of Trust. The recitals in such reconveyance of any matters of fact shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as "the person or persons legally entitled to the Mortgaged Property." Such request and reconveyance shall operate as a reassignment of the Rents assigned to Lender in this Deed of Trust.

28. Substitution of Trustee. Lender, at Lender's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed and acknowledged by Lender and recorded in



the office of the Recorder of the county or counties in which the Mortgaged Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Mortgaged Property. To be effective, the instrument must contain the names of the original Borrower, Trustee, and Lender under this Deed of Trust, the book and page or instrument or document number at which, and the county or counties in which, this Deed of Trust is recorded, and the name and address of the substitute Trustee. If any notice of default has been recorded under this Deed of Trust, this power of substitution cannot be exercised until all costs, fees, and expenses of the then acting Trustee have been paid. On such payment, the then acting Trustee shall endorse receipt of the payment on the instrument of substitution. The procedure provided in this paragraph for substitution of Trustees is not exclusive of other provisions for substitution provided by Governmental Requirements.

29. No Waiver by Lender. No waiver by Lender of any right or remedy provided by the Loan Documents or Governmental Requirements shall be effective unless such waiver is in writing and signed by two authorized officers of Lender. Waiver by Lender of any right or remedy granted to Lender under the Loan Documents or Governmental Requirements as to any transaction or occurrence shall not be deemed a waiver of any future transaction or occurrence. The acceptance of payment of any sum secured by this Deed of Trust after its due date, or the payment by Lender of any Indebtedness or the performance by Lender of any Obligations of Borrower under the Loan Documents, on Borrower's failure to do so, or the addition of any payment so made by Lender to the Indebtedness secured by this Deed of Trust, or the exercise of Lender's right to enter the Mortgaged Property and receive and collect the Rents from it, or the assertion by Lender of any other right or remedy under the Loan Documents, shall not constitute a waiver of Lender's right to require prompt performance of all other Obligations of Borrower under the Loan Documents and payment of the Indebtedness, or to exercise any other right or remedy under the Loan Documents for any failure by Borrower to timely and fully pay the Indebtedness and perform its Obligations under the Loan Documents. Lender may waive any right or remedy under the Loan Documents or Governmental Requirements without notice to or consent from Borrower, any guarantor of the Indebtedness and of Borrower's Obligations under the Loan Documents, or any holder or claimant of a lien or other interest in the Mortgaged Property that is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other person by so doing.

30. Consents and Modifications; Lender, at Lender's option and discretion only may enter into an agreement with a Borrower to (a) extend the time for payment of all or any portion of Borrower's Indebtedness under the Loan Documents; (b) accept a renewal note or notes, or release any person from liability, for all or any portion of such Indebtedness; (c) agree with Borrower to modify the terms and conditions of payment under the Loan Documents; (d) reduce the amount of the monthly installments due under *paragraph 9* of this Deed of Trust; (e) reconvey or release other or additional security for the repayment of Borrower's Indebtedness under the Loan Documents; (f) approve the preparation or filing of any map or plat with respect to the Mortgaged Property; (g) enter into any extension or subordination agreement affecting the Mortgaged Property or the lien of this Deed of Trust; and (h) agree with Borrower to modify the term, the rate of interest, or the period of amortization of the Note or alter the amount of the monthly installments payable under the Note. No action taken by Lender under this paragraph



shall be effective unless it is in writing, subscribed by Lender, and, except as expressly stated in such writing, no such action will impair or affect (i) Borrower's obligation to pay the Indebtedness secured by this Deed of Trust and to observe all Obligations of Borrower contained in the Loan Documents; (ii) the guaranty of any Person of the payment of the Indebtedness secured by this Deed of Trust; or (iii) the lien or priority of the lien of this Deed of Trust. At Lender's request, Borrower shall promptly pay Lender a reasonable service charge, together with all insurance premiums and Attorney Fees as Lender may have advanced, for any action taken by Lender under this paragraph.

Whenever Lender's consent or approval is specified as a condition of any provision of this Deed of Trust, such consent or approval shall not be effective unless such consent or approval is in writing, signed by two authorized officers of Lender.

31. Waiver of Right of Offset. No portion of the Indebtedness secured by this Deed of Trust shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have against Lender. Borrower hereby waives, to the fullest extent permitted by Governmental Requirements, the benefits of California Code of Civil Procedure §431.70, which provides:

Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

32. Future Advances. On request by Borrower, Lender, at Lender's option, may make future advances to Borrower. All such future advances, with interest, shall be added to and become a part of the Indebtedness secured by this Deed of Trust when evidenced by promissory note(s) reciting that such note(s) are secured by this Deed of Trust.

33. Prepayment. If the Note secured by this Deed of Trust provides for a fee or charge as consideration for the acceptance of prepayment of principal, Borrower agrees to pay said fee or charge if the Indebtedness or any part of it shall be paid, whether voluntarily or involuntarily, before the due date stated in the Note, even if Borrower has defaulted in payment or in the performance of any agreement under this Deed of Trust and Lender, for that reason or by reason of *paragraphs 20 and 21* of this Deed of Trust, shall have declared all sums secured by this Deed of Trust immediately due and payable.

34. Additional Borrower Representations. To induce Lender to enter into this Deed of Trust, the Note, and the other Loan Documents and to make the Loan, Borrower makes the following representations and warranties, which are deemed made as of both the date and the recordation of this Deed of Trust:

34.1. Capacity. Borrower and the individuals executing Loan Documents on Borrower's behalf have the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Deed of Trust, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan, and to carry out the contemplated transactions.

34.2. Authority and Enforceability. Borrower's execution, delivery, and performance of this Deed of Trust, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any Person or Governmental Authority. Borrower has obtained or will obtain on or before the recordation of this Deed of Trust all necessary Governmental Authority and other approvals necessary for Borrower to comply with the Loan Documents. This Deed of Trust, the Note, and the other Loan Documents executed in connection with the Loan, when executed and delivered by Borrower, shall constitute the legal, valid, binding, and joint and several obligations of Borrower enforceable in accordance with their respective terms.

34.3. Compliance With Other Instruments. The execution and delivery of this Deed of Trust and the other Loan Documents, and compliance with their respective terms, and the issuance of the Note and other Loan Documents as contemplated in this Deed of Trust, shall not result in a breach of any of the terms or conditions of, or result in the imposition of, any lien, charge, or encumbrance (except as created by this Deed of Trust and the other Loan Documents) on any properties of Borrower, or constitute a default (with due notice or lapse of time or both) or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which Borrower is a party or by which Borrower or its properties may be bound or affected.

34.4. Compliance With Law. The execution and delivery of this Deed of Trust, the Note, and the other Loan Documents, or any other document, agreement, certificate, or instrument to which Borrower is bound in connection with the Loan, do not conflict with, result in a breach or default under, or create any lien or charge under any provision of any Governmental Requirements to which it is subject and shall not violate any of the Governmental Requirements.

34.5. Material Adverse Events. Since the date of the financial statements delivered to Lender before recordation of this Deed of Trust, neither the condition (financial or otherwise) nor the business of Borrower and the Mortgaged Property have been materially adversely affected in any way.

34.6. Litigation. There are no actions, suits, investigations, or proceedings pending or, to Borrower's knowledge after due inquiry and investigation, threatened against or affecting Borrower at law or in equity, before or by any Person or Governmental Authority, that, if

adversely determined, would have a material adverse effect on the business, properties, or condition (financial or otherwise) of Borrower or on the validity or enforceability of this Deed of Trust, any of the other Loan Documents, or the ability of Borrower to perform under any of the Loan Documents.

34.7. No Untrue Statements. All statements, representations, and warranties made by Borrower in this Deed of Trust or any other Loan Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by Borrower to Lender under the Loan Documents (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the recordation of this Deed of Trust, (b) do not and shall not contain any untrue statement of a material fact, and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. Borrower understands that all such statements, representations, and warranties shall be deemed to have been relied on by Lender as a material inducement to make the Loan.

34.8. Policies of Insurance. Each copy of the insurance policies relating to the Mortgaged Property delivered to Lender by Borrower (a) is a true, correct, and complete copy of the respective original policy in effect on the date of this Deed of Trust, and no amendments or modifications of said documents or instruments not included in such copies have been made, except as stated in this *paragraph 34.8* and (b) has not been terminated and is in full force and effect. Borrower is not in default in the observance or performance of its material obligations under said documents or instruments and Borrower has done all things required to be done as of the date of this Deed of Trust to keep unimpaired its rights thereunder.

34.9. Financial Statements. All financial statements furnished to Lender are true and correct in all material respects, are prepared in accordance with generally accepted accounting principles, and do not omit any material fact the omission of which makes such statement or statements misleading. There are no facts that have not been disclosed to Lender by Borrower in writing that materially or adversely affect or could potentially in the future affect the Mortgaged Property or the business prospects, profits, or condition (financial or otherwise) of Borrower or any guarantor or Borrower's abilities to perform the Obligations and pay the Indebtedness.

34.10. Water Rights. (a) Borrower is the sole owner of record of the Water Rights; (b) the Water Rights are appurtenant to the Mortgaged Property and are free and clear of all liens and encumbrances except as set forth in the title report described in *paragraph 1.22*; (c) the Water Rights are sufficient to satisfy all water requirements of the development of the Mortgaged Property as presently contemplated; (d) the Water Rights include all water rights appurtenant to the Mortgaged Property; (e) Borrower has received a water service commitment from the applicable Water District guaranteeing water service for the Mortgaged Property in an amount necessary to satisfy the requirements for such property in its currently contemplated final state of development; and (f) on recordation of this Deed of Trust with the county recorder, Lender shall have a valid, first priority, perfected security interest in the Water Rights.

34.11. Taxes. Borrower has filed or caused to be filed all tax returns that are required to be filed by Borrower under the Governmental Requirements of each Governmental Authority with taxing power over Borrower, and Borrower has paid, or made provision for the payment of, all taxes, assessments, fees, and other governmental charges that have or may have become due

under said returns, or otherwise, or under any assessment received by Borrower except that such taxes, if any, as are being contested in good faith and as to which adequate reserves (determined in accordance with generally accepted accounting principles) have been provided.

34.12. Title to Mortgaged Property and Zoning. As of the date of recordation of this Deed of Trust, Borrower holds full legal and equitable title to the Mortgaged Property, subject only to the Permitted Encumbrances. The Mortgaged Property is zoned as "MP", however, Borrower is advised to consult with the Sonoma County Building Department (PRMD) for further details of exact type of zoning under applicable zoning laws. Adequate water, telephone, gas and electrical supply, storm and sanitary sewerage or septic facilities, as required, and any other required public utilities are available for the Mortgaged Property. Adequate means of access exist between the Mortgaged Property and public streets for pedestrians and motor vehicles. The Mortgaged Property currently complies with all Governmental Requirements.

34.13. Leases. If the Mortgaged Property includes a leasehold estate, Borrower has not and shall not surrender, terminate, cancel, waive, accept waiver, change, supplement, grant subleases of, alter, surrender, or amend, and shall comply with all terms, covenants, and conditions in the Leasehold.

34.14. Further Acts. Borrower shall, at its sole cost and expense, and without expense to Trustee or Lender, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Lender shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting, and confirming to Trustee the Mortgaged Property and rights, and as to Lender the security interest as to the Personalty, conveyed or assigned by this Deed of Trust or intended now or later so to be, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust and, on demand, shall execute and deliver, and authorizes Lender to execute in the name of Borrower, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien of this Deed of Trust on the Mortgaged Property.

34.15. Filing Fees. Borrower shall pay all filing, registration, or recording fees, all Governmental Authority stamp taxes and other fees, taxes, duties, imposts, assessments, and all other charges incident to, arising from, or in connection with the preparation, execution, delivery, and enforcement of the Note, this Deed of Trust, the other Loan Documents, any supplemental deed of trust or mortgage, or any instrument of further assurance.

34.16. Entity Compliance. As long as it is the owner of the Mortgaged Property, Borrower, if a corporation, limited liability company, or partnership, shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as such entity under the laws of the state of its incorporation or formation, and shall comply with all Governmental Requirements of any Governmental Authority applicable to Borrower or to the Mortgaged Property or any part of it.

34.17. No Purchase of Security. Borrower represents and warrants that this Deed of Trust and the Indebtedness secured by this Deed of Trust is for the sole purpose of conducting or acquiring



a lawful business, profession, or commercial activity or for the acquisition or management of real or personal property as a commercial investment, and all proceeds of such Indebtedness shall be used for said business or commercial investment purpose. Such proceeds shall not be used to purchase any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued under that Act, including, without limitation, Regulations G, T, and X of the Board of Governors of the Federal Reserve System.

35. Governing Law. This instrument shall be deemed to have been made in the State of California, and the validity of this Deed of Trust and the other Loan Documents, their construction, interpretation, and enforcement, and the parties' rights under such documents and concerning the Mortgaged Property, shall be decided under, governed by, and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising in connection with this Deed of Trust and the other Loan Documents shall be tried and litigated only in the state courts located in the County of Sonoma, State of California, or the federal courts located in the Northern District of California. Borrower waives any right Borrower may have to assert the doctrine of forum non conveniens or to object to such venue.

36. Request for Notice of Default. The undersigned Borrower requests that a copy of any notice of default and any notice of sale under this Deed of Trust be mailed to Borrower at its address specified in *paragraph 41*.

37. Taxation of Deeds of Trust. In the event of the enactment of any law deducting from the value of the Mortgaged Property any mortgage lien on it, or imposing on Lender the payment of all or part of the taxes, charges, or assessments previously paid by Borrower under this Deed of Trust, or changing the law relating to the taxation of mortgages, debts secured by mortgages, or Lender's interest in the Mortgaged Property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender for them; provided, however, that if in the opinion of Lender's counsel such payment cannot lawfully be made by Borrower, then Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable without notice to Borrower. Lender may invoke any remedies permitted by this Deed of Trust.

38. Mechanics Liens. Borrower shall pay from time to time when due, all lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part of it, or on the Rents arising therefrom, and in general shall do or cause to be done everything necessary so that the lien and security interest of this Deed of Trust shall be fully preserved, at Borrower's expense, without expense to Lender; provided, however, that if Governmental Requirements empower Borrower to discharge of record any mechanics, laborer's, materialman's, or other lien against the Mortgaged Property by the posting of a bond or other security, Borrower shall not have to make such payment if Borrower posts such bond or other security on the earlier of (a) *10 days* after the filing or recording of same or (b) within the time prescribed by law, so as not to place the Mortgaged Property in jeopardy of a lien or forfeiture.

Borrower represents and warrants to Lender that Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission, or other sum in connection with the execution of this Deed of Trust, the consummation of the transactions

APN: 128-381-028

contemplated by this Deed of Trust, or the making of the Loan secured by this Deed of Trust by Lender to Borrower, and Borrower indemnifies and agrees to hold Lender harmless from and against any and all loss, liability, or expense, including court costs and Attorney Fees, that Lender may suffer or sustain if such warranty or representation proves inaccurate in whole or in part.

40. Liability for Acts or Omissions. Lender shall not be liable or responsible for its acts or omissions under this Deed of Trust, except for Lender's own gross negligence or willful misconduct, or be liable or responsible for any acts or omissions of any agent, attorney, or employee of Lender, if selected with reasonable care.

41. Notices. Except for any notice required by Governmental Requirements to be given in another manner, (a) all notices required or permitted by the Loan Documents shall be in writing; (b) each notice shall be sent (i) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (ii) by certified United States mail, postage prepaid, return receipt requested; or (iii) by nationally recognized overnight delivery service, marked for next-business-day delivery; and (c) all notices shall be addressed to the appropriate party at its address as follows or such other addresses as may be designated by notice given in compliance with this provision:

**Lender:**  
**VISIO INTERNATIONAL, INC – A California Corporation**  
**Y. Tito Sasaki and Janet L. Sasaki Trust**  
**P.O. BOX 200**  
**VINEBURG, CA 95487**

Re: APN/Loan No. 128-381-028 for \$2,200,000 USD Promissory Note

**Borrower:**  
**KS MATTSON PARTNERS, LP – a California Limited Partnership**  
**P.O. BOX 5490**  
**VACAVILLE, CA 95696**

Kenneth Mattson, Managing Partner

Notices will be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

Page 35 of 41



To the extent permitted by Governmental Requirements, if there is more than one Borrower, notice to any Borrower shall constitute notice to all Borrowers. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address(es).

42. Statement of Obligations. Except as otherwise provided by Governmental Requirements, at Lender's request, Borrower shall promptly pay to Lender such fee as may then be provided by law as the maximum charge for each statement of obligations, Lender's statement, Lender's demand, payoff statement, or other statement on the condition of, or balance owed, under the Note or secured by this Deed of Trust.

43. Application of Payments. Except as otherwise expressly provided by Governmental Requirements or any other provision of this Deed of Trust, all payments received by Lender from Borrower under the Loan Documents shall be applied by Lender in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of this Note or the Deed of Trust, in such order as Lender, in its sole and absolute discretion, elects, (b) interest payable under the Note, and (c) principal under the Note.

44. Remedies Are Cumulative. Each remedy in this Deed of Trust is separate and distinct and is cumulative to all other rights and remedies provided by this Deed of Trust or by Governmental Requirements, and each may be exercised concurrently, independently, or successively, in any order whatsoever.

45. Obligations of Borrower Joint and Several. If more than one Person is named as Borrower, each obligation of Borrower under this Deed of Trust shall be the joint and several obligations of each such Person.

46. Severability. If any provision of the Loan Documents, or the application of them to the circumstances, is held void, invalid, or unenforceable by a court of competent jurisdiction, the Loan Documents, and the applications of such provision to other parties or circumstances, shall not be affected thereby, the provisions of the Loan Documents being severable in any such instance.

47. Delegation of Authority. Whenever this Deed of Trust provides that Borrower authorizes and appoints Lender as Borrower's attorney-in-fact to perform any act for or on behalf of Borrower or in the name, place, and stead of Borrower, Borrower expressly understands and agrees that this authority shall be deemed a power coupled with an interest and such power shall be irrevocable.

#### 48. General Provisions.

48.1. Successors and Assigns. This Deed of Trust, this Deed of Trust applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors, and assigns of each party to this Deed of Trust.

48.2. Meaning of Certain Terms. As used in this Deed of Trust and unless the context otherwise provides, the words "herein," "hereunder" and "hereof" mean and include this Deed of Trust as a whole, rather than any particular provision of it.

48.3. Authorized Agents. In exercising any right or remedy, or taking any action provided in this Deed of Trust, Lender may act through its employees, agents, or independent contractors, as Lender expressly authorizes.

48.4. Gender and Number. Wherever the context so requires in this Deed of Trust, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

48.5. Captions. Captions and paragraph headings used in this Deed of Trust are for convenience of reference only, are not a part of this Deed of Trust, and shall not be used in construing it.

48.6. Time Is of the Essence. As a material inducement and consideration to the parties entering into this Deed of Trust, and but for this provision the parties would not enter into this Deed of Trust, the parties agree that the performance in a timely manner of each deadline set forth in this Deed of Trust before its expiration is of crucial importance to the parties. Failure by a party to timely perform an obligation before the deadline set forth in this Deed of Trust (no matter for what reason, nor how soon thereafter it may have been performed, nor the lack of prejudice to the other party as the result of such nonperformance) shall result in a default by the nonperforming party or the failure of a condition, as appropriate. The parties expressly waive any equitable relief with respect to a missed deadline.

#### 49. Dispute Resolution: Waiver of Right to Jury Trial

49.1. WAIVER OF RIGHT TO JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS DEED OF TRUST. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND, BY ITS ACCEPTANCE OF THE BENEFITS OF THIS DEED OF TRUST, LENDER EACH (A) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR BORROWER AND LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER BY ENTERING INTO THIS DEED OF TRUST OR ACCEPTING ITS BENEFITS, AS THE CASE MAY BE, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (B) FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS DEED OF TRUST.

49.2. ARBITRATION. TO THE EXTENT A PREDISPUTE WAIVER OF THE RIGHT TO TRIAL BY JURY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS DEED OF TRUST AND OTHER LOAN DOCUMENTS OR TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING, WITHOUT LIMITATION, THE MAKING, PERFORMANCE, OR INTERPRETATION OF THIS DEED OF TRUST OR OTHER LOAN DOCUMENTS, SHALL BE RESOLVED BY BINDING ARBITRATION. UNLESS OTHERWISE AGREED ON, THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (9 USC §§1-16) (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE THEN-CURRENT ARBITRATION PROCEDURES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE §§1281-1284.3, AND LOCAL SUPPLEMENTARY RULES THEN IN EFFECT. JUDGMENT ON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE FEDERAL ARBITRATION ACT, ON THE ONE HAND, AND THE CALIFORNIA CODE OF CIVIL PROCEDURE AND SUCH LOCAL SUPPLEMENTARY RULES, ON THE OTHER HAND, THE CODE OF CIVIL PROCEDURE AND SUCH LOCAL SUPPLEMENTARY RULES SHALL PREVAIL. UNLESS OTHERWISE AGREED BY THE PARTIES, THE ARBITRATION SHALL BE HELD BEFORE A SINGLE ARBITRATOR SELECTED AS FOLLOWS: THE DISPUTING PARTIES SHALL, WITHIN TEN (10) BUSINESS DAYS FROM THE DATE ARBITRATION IS REQUESTED BY EITHER PARTY, AGREE UPON AN ARBITRATOR. IF THE PARTIES CANNOT SO AGREE, THEN EACH PARTY, WITHIN FIVE (5) BUSINESS DAYS THEREAFTER, SHALL NAME AN ARBITRATOR WHO SHALL BE AN ATTORNEY LICENSED TO PRACTICE IN CALIFORNIA AND EXPERIENCED AND QUALIFIED IN REAL ESTATE MATTERS OF THE TYPE CONTEMPLATED BY THIS DEED OF TRUST AND OTHER LOAN DOCUMENTS OR A RETIRED CALIFORNIA SUPERIOR OR APPELLATE COURT JUDGE. THOSE TWO NAMED ARBITRATORS SHALL THEN, WITHIN FIVE (5) BUSINESS DAYS, SELECT A THIRD ARBITRATOR WHO SHALL BE QUALIFIED AS DEFINED ABOVE, AND SUCH THIRD ARBITRATOR SHALL BE THE SOLE ARBITRATOR TO HEAR AND DETERMINE THE DISPUTE. IF ANY PARTY HERETO FAILS TO NAME AN ARBITRATOR WITHIN THE TIME LIMIT PROVIDED IN THIS PARAGRAPH, THEN THE ARBITRATOR TIMELY NAMED BY THE OTHER PARTY SHALL HEAR AND DECIDE THE DISPUTE. IF THE ARBITRATION IS COMMENCED, THE PARTIES AGREE TO PERMIT DISCOVERY PROCEEDINGS OF THE TYPE PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE BOTH IN ADVANCE OF, AND DURING RECESSES OF, THE ARBITRATION HEARINGS. ALL FACTS AND OTHER INFORMATION RELATING TO ANY ARBITRATION ARISING UNDER THIS DECLARATION SHALL BE KEPT CONFIDENTIAL TO THE FULLEST EXTENT PERMITTED BY LAW. THE DECISION OR THE ARBITRATOR(S) SHALL FOLLOW THE LAW, SHALL BE RENDERED WITHIN TEN (10) BUSINESS DAYS FOLLOWING THE CONCLUSION OF THE ARBITRATION, AND SHALL BE SET FORTH IN A WRITTEN OPINION STATING THE FINDINGS OF FACT OR THE ARBITRATOR(S) AND LEGAL AUTHORITIES THAT ARE THE BASIS OF THE DECISION. THE VENUE FOR ANY SUCH ARBITRATION SHALL BE THE COUNTY IN WHICH BENEFICIARY'S OFFICE AT THE ADDRESS SET FORTH HEREIN IS SITUATED. THE COSTS OF THE ARBITRATOR(S) SHALL BE SPLIT EQUALLY BY

THE PARTIES BUT SHALL BE A RECOVERABLE COST FOR THE PARTY PREVAILING IN THE ARBITRATION.

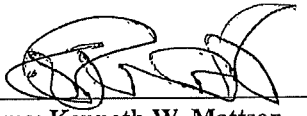
49.3. JUDICIAL REFERENCE. TO THE EXTENT A PREDISPUTE WAIVER OF THE RIGHT TO TRIAL BY JURY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS DEED OF TRUST AND OTHER LOAN DOCUMENTS OR TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING, WITHOUT LIMITATION, THE MAKING, PERFORMANCE, OR INTERPRETATION OF THIS DEED OF TRUST OR OTHER LOAN DOCUMENTS, SHALL BE HEARD BY A REFEREE AND RESOLVED BY JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE §638. THE REFEREE SHALL BE AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF CALIFORNIA AND EXPERIENCED AND QUALIFIED IN REAL ESTATE MATTERS OF THE TYPE CONTEMPLATED BY THIS DEED OF TRUST AND OTHER LOAN DOCUMENTS OR A RETIRED CALIFORNIA SUPERIOR OR APPELLATE COURT JUDGE. THE PARTIES SHALL NOT SEEK TO APPOINT A REFEREE THAT MAY BE DISQUALIFIED PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE §641 or §641.2 WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN TEN (10) CALENDAR DAYS AFTER ONE PARTY SERVES A WRITTEN NOTICE OF INTENT FOR JUDICIAL REFERENCE ON THE OTHER PARTY OR PARTIES, THEN THE REFEREE WILL BE SELECTED BY THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE §640(b). ANY DECISION OF THE REFEREE SHALL BE ENTERED AS A JUDGMENT IN THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE §§644 and 645.

49.4. PROVISIONAL REMEDIES; FORECLOSURE AND INJUNCTIVE RELIEF. Nothing in Section 50.2, above, shall be deemed to apply to or limit the right of Lender to: (a) exercise self help remedies, (b) foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (c) obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver), or (d) pursue rights against Borrower or any other party in a third party proceeding in any action brought against Lender (including, but not limited to, actions in bankruptcy court). Lender may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during, or after the pendency of any proceeding referred to in Section 49.2, above. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies or the opposition to any such provisional remedies shall constitute a waiver of the right of any Borrower, Lender or any other party, including, but not limited to, the claimant in any such action, to require submission the dispute, claim or controversy occasioning resort to such remedies to any proceeding referred to in Section 49.2, above.

IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust as of the date first written above.

**BORROWER TO SIGN DOCUMENT EXACTLY AS NAME APPEARS**

**KS MATTSON PARTNERS LP, a**  
California limited Partnership

By:   
Name: **Kenneth W. Mattson**  
Its: **Managing Partner**

Page **40** of **41**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Sacramento

On July 28, 2021 before me, Deana Curtis, Notary Public  
(insert name and title of the officer)

personally appeared Kenneth W. Mattson  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)





**EXHIBIT "A"**

Consumer's Title Company of California, Inc.  
Order No.: 21-134678-03

**PARCEL 1:**

LOT 2, AS SHOWN ON PARCEL MAP NO. 7214, FILED IN THE OFFICE OF THE COUNTY RECORDER ON OCTOBER 8, 1980, IN BOOK 312 OF MAPS, PAGE(S) 40 AND 41, SONOMA COUNTY RECORDS.

**PARCEL 2:**

THAT PORTION OF LOT 1, AS SHOWN ON PARCEL MAP NO. 7214, FILED IN THE OFFICE OF THE COUNTY RECORDER ON OCTOBER 8, 1980, IN BOOK 312 OF MAPS, PAGE(S) 40 AND 41, SONOMA COUNTY RECORDS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE TAGGED R.C.E. 20909, AS SHOWN ON SAID PARCEL MAP NO. 7214, SAID IRON PIPE BEING THE NORTHWEST CORNER OF LOT 1 AND THE SOUTHWEST CORNER OF LOT 2 OF SAID PARCEL MAP NO. 7214; THENCE ALONG THE LINE COMMON TO LOTS 1 AND 2, SOUTH 83° 20' 02" EAST, 431.21 FEET TO A 1/2 INCH IRON PIPE TAGGED R.C.E. 20909; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL MAP NO. 7214, SOUTH 6° 47' 54" WEST, 123.87 FEET; THENCE SOUTH 80° 45' 29" WEST, 380.46 FEET TO THE WESTERLY LINE OF SAID PARCEL MAP NO. 7214; THENCE ALONG SAID WESTERLY LINE, NORTH 9° 14' 31" WEST, 237.24 FEET TO THE POINT OF BEGINNING.

**PARCEL 3:**

AN EASEMENT FOR GENERAL ROAD PURPOSES OVER THE WESTERLY 40 FEET OF LOTS 3 AND 4, AS SHOWN ON PARCEL MAP NO. 7214, FILED IN THE OFFICE OF THE COUNTY RECORDER ON OCTOBER 8, 1980, IN BOOK 312 OF MAPS, PAGE(S) 40 AND 41, SONOMA COUNTY RECORDS.

APN: 128-381-028-000

**SCHEDULE OF LEASES**

Tenant Name: Luxxbox USA, Inc.  
Lease Date: December 18, 2020  
Lease Amount: \$10,500.00 USD  
Lease End Date: 12/31/2023  
Security Deposit: \$10,500.00 USD  
Tenant Notice: Attached  
Tenant Consent: Yes

Tenant Name: D.O.B. Wine Company, LLC  
Lease Date: February 1, 2021  
Lease Amount: \$10,500.00 USD  
Lease End Date: 02/29/2024  
Security Deposit: \$10,500.00 USD  
Tenant Notice: Attached  
Tenant Consent: Yes