

AFTER RECORDING MAIL TO:

Level Capital LLC  
ATTN: Roxanne Smith  
11250 Kirkland Way Suite 100  
Kirkland, WA 98033

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LEVEL CAPITAL LLC

CONSTRUCTION DEED OF TRUST

NOTICE TO RECORDER: THIS INSTRUMENT CONSTITUTES A SECURITY AGREEMENT AND FIXTURE FILING UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A SECURITY AGREEMENT AND FIXTURE FILING.

THE LOAN WHICH IS SECURED BY THIS INSTRUMENT IS SUBJECT TO A VARIABLE RATE OF INTEREST.

Loan No.: 20002528  
Grantor(s): Oquendo Investments LLC, A Utah Limited Liability Company  
Grantee(s): Level Capital LLC  
Common Address: 447 & 449 East Greenwood Ave, Lot 1 & 2, Midvale, UT 84047  
Abbreviated Legal: SEE EXHIBIT A  
TPN: 2230403063,2230403064

THIS DEED OF TRUST is dated January 26, 2022, among Oquendo Investments LLC, A Utah Limited Liability Company ("Borrower" or "Grantor"), with its principal place of business at ; Level Capital LLC, a Washington limited liability company, with its principal place of business at 11250 Kirkland Way Suite 100, Kirkland, WA 98033 ("Beneficiary"); and Cottonwood Title, with its principal place of business at 7020 S Union Park Avenue Midvale UT 84047 ("Trustee").

1. **Conveyance and Grant.** For good and valuable consideration and for the purpose of securing payment and performance of each of the Obligations (defined in Section 2, below) and for the benefit of Lender, Borrower hereby irrevocably and unconditionally grants, bargains, pledges, conveys, transfers, and assigns to Trustee, in trust with power of sale and right of entry and possession, for the use and benefit of Lender, and Grantor grants to Lender a security interest in all of Borrower's right, title, and interest, whether now or hereinafter acquired, in and to the real property legally described on Exhibit A (the "Real Property") and the following rights, property and interests (together with the Real Property referred to as "Collateral"):
  - a. All existing or future easements, access rights, licenses, hereditaments, tenements, and appurtenances, including without limitation, all minerals, oil, gas, geothermal and similar commercially valuable substances that may be in, under or produced from the Real Property;

- b. All existing or future buildings, structures or other improvements located on the Real Property (the "Improvements");
- c. All existing and future leases, subleases, licenses, or agreements related to possession or occupancy of any portion of the Real Property or the Improvements by third parties ("Leases"), whether oral or written and any extensions and renewals thereof;
- d. All goods, materials, supplies, chattels, equipment, fixtures, heating, plumbing, refrigeration, lighting fixtures, and/or appliances now or hereafter attached to the Real Property or used in connection therewith, and all inventory located on the Real Property or in the Improvements now or in the future, including those used by Borrower in the development of the Real Property and construction of the Improvements;
- e. All right, title and interest of Borrower in the land lying within any street or roadway adjoining the Real Property;
- f. Any vacated or hereafter vacated street or alley adjoining the Real Property;
- g. Any strips and gores adjoining the Real Property;
- h. All and singular the passages, waters, water rights (whether tributary or non-tributary or not non-tributary), water courses, wells, well permits, water stock, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Real Property, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license, and the reversion and reversions and remainder and remainders thereof (the "Water Rights") together with any and all associated structures and facilities for the diversion, carriage, transmission, conveyance, measurement, storage or use of said Water Rights, and any and all easements, rights of way, fixtures, personal property, contract rights, licenses, permits or decrees associated with or used in connection with any such Water Rights or which may be necessary for the development, operation or maintenance of such Water Rights);
- i. Borrower's interest in and to the Loan evidenced by the Loan Documents or any Related Loan (as each of those terms are defined in Section 2, below) and the proceeds thereof, whether disbursed or not, including without limitation any reserve, escrow, impound or other accounts; and any monetary deposits paid by Borrower to any public or private utility relating to the Real Property or the Improvements;
- j. All rents, issues and profits, including without limitation income, security deposits, revenues, royalties, profits, proceeds of any sale of the Real Property or Improvements, and proceeds of any insurance, warranty or condemnation proceeds ("Rents, Issues and Profits"), whether now due, past due, or to become due;
- k. All of Borrower's right, title and interest in and to permits or other approvals, designs, plans, specifications, surveys, plat and plat approvals, environmental reports, appraisals, as-built drawings, architectural renderings, engineering, construction contracts or subcontracts, material or supply agreements; consulting agreements; joint venture agreements, marketing and listing agreements, purchase and sale agreements, and another other rights or claims relating to the Real Property or the Improvements ("Plans and Specifications");
- l. Borrower's development rights and permits;
- m. All other intangibles and licenses relating to the Real Property or the Improvements (e.g., trade names, trademarks, logos);
- n. Any of Borrower's rights under condominium laws, covenants, conditions or restrictions, or homeowner's/condominium association governing documents; and

- o. All books and records pertaining to the Real Property and the Improvements.
2. **Obligations Secured.** Borrower conveys the interests and grants the security interests set forth in Section 1 for the purpose of securing the following obligations and those set forth in the Loan Documents (the "Obligations"):
- a. A loan in the amount of Nine Hundred Fifty Eight Thousand Forty One Dollars and no/100 Cents (\$958,041.00) (the "Loan" or the "Indebtedness"), evidenced by that certain Promissory Note Secured by Deed of Trust payable by Borrower to Lender and executed concurrently with this Deed of Trust (the "Note"), together with interest thereon, and any modifications, extensions, or renewals thereof, including changes in the Interest Rate or increases in the Indebtedness, whether or not evidenced by a new or additional promissory note or notes. The term "Indebtedness" shall also include all principal, interest, and other amounts, costs and expenses payable under the Loan Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Loan Documents and any amounts expended or advanced by Lender to discharge Borrower's obligations or expenses incurred by Trustee or Lender to enforce Borrower's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.
  - b. Payment and performance of each and every obligation set forth in "Note," the Construction Loan Agreement (the "Loan Agreement"), this Deed of Trust, any agreements relating to financial covenants, and all other documents that evidence, secure or govern the Loan and any modifications or extensions thereof (the "Loan Documents"); provided, however, that the Obligations as defined herein shall not include any obligations under related guaranties or indemnities, including without limitation provisions relating to the presence of Hazardous Materials, all of which shall be separately enforceable according to their terms and conditions and shall not be secured hereby but violations of which shall nevertheless constitute an Event of Default;
  - c. Payment and performance of each and every obligation of Borrower under any other loan documents that have been or may be executed by Borrower or entities related to Borrower because they are wholly owned or controlled by Borrower or because they are also owned and controlled by the same principals as Borrower ("Affiliates") that evidence, secure or govern one or more existing or future loans made by Lender to Borrower or its Affiliates (collectively "Related Loans"), together with interest thereon and any modifications, extensions, or renewals thereof, as well as all claims by Lender against Borrower or Affiliate, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower may be liable individually or jointly with others, whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable; and
  - d. All future advances made by Lender to Borrower and performance of all additional obligations as Borrower may agree to perform for the benefit of Lender, whether or not the subject of the Loan Documents or the subject of an existing or future Related Loan, as defined in Subsection (c), above. This Deed of Trust shall secure any and all additional sums which may be advanced by Lender pursuant to the Loan Documents or pursuant to any modifications or amendments of the Loan Documents or any additional notes that may be executed by Borrower, and Lender shall have no obligation to record a modification of this Deed of Trust or record an additional deed of trust in order to secure such sums.
  - e. This Deed of Trust secures future advances to be used for construction of improvements on the Collateral. Accordingly, this Deed of Trust constitutes a "construction mortgage" under the applicable Utah commercial code. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the applicable Utah commercial code. All or part of the Collateral are or are to

become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Grantor and the address of Lender is set forth herein.

3. **Grant of Security Interest.** This Deed of Trust creates a lien on the Collateral, and it constitutes an absolute assignment of the Rents, Issues and Profits and of the Leases, all in favor of Lender as Beneficiary. The lien shall attach to all property affixed or attached now or in the future, which shall be deemed fixtures and a part of the Real Property. To the extent that any of the Collateral shall be deemed to be personal property, Borrower also hereby grants to Lender a security interest in it, to secure payment and performance of the Obligations.
4. **UCC and Fixture Filings.** To the extent that any of the Collateral is personal property, Lender may, in its sole discretion, perfect its security interest by filing one or more financing statements (or amendments and continuations thereof) at Borrower's expense. In addition, this Deed of Trust shall constitute a fixture filing under the Uniform Commercial Code of the state in which the Real Property is located, and it shall cover fixtures existing now or in the future. Because this Deed of Trust secures disbursements to be made by Lender to Borrower for the purposes of acquiring and development of land and construction of Improvements thereon, this Deed of Trust shall constitute a construction deed of trust under the Uniform Commercial Code of the state in which the Real Property is located. Despite the inclusion of provisions in this Deed of Trust addressing Borrower's personal property and the perfection of security interests therein by financing statements or other documents, the parties hereby acknowledge and agree that their intention is that the Collateral are and will constitute real property subject to all of Lender's rights and remedies upon a default by Borrower, granted under this Deed of Trust, the Uniform Commercial Code, or at law or equity.
5. **Assignment of Leases and Rents.** Borrower shall not lease any or all of the Collateral unless otherwise permitted by the Loan Documents. Notwithstanding the foregoing, however, Borrower hereby irrevocably, absolutely, and unconditionally assigns and transfers to Lender (a) all Rents, Issues and Profits along with a corresponding license to collect and retain them; (b) all Leases with the right to administer, modify, cancel, or terminate them as well as all guaranties related to the Leases (the "Rent Assignment"). The Rent Assignment shall be a present, absolute and unconditional assignment. No additional steps shall be required to make this assignment of rents, issues, and profits effective or to perfect the same.
  - a. Borrower hereby appoints Lender its attorney-in-fact, coupled with an interest, to (i) demand, receive and enforce payment of Rents, Issues and Profits; (ii) provide receipts, releases and satisfactions of Rents, Issues and Profits; and (iii) sue in the name of Borrower or Lender for Rents, Issues and Profits.
  - b. Borrower hereby appoints Lender its attorney-in-fact, coupled with an interest, to perform all obligations of Borrower under the Leases,
  - c. Borrower hereby appoints Lender its attorney-in-fact, coupled with an interest, to (i) delegate the rights granted by this Rent Assignment of Leases and Rents, Issues and Profits; (ii) to appear in any insolvency proceedings and to collect any payment due Borrower; and (iii) use all measures, at law or in equity and in its sole discretion, to give effect to the Rent Assignment set forth in this Section.
  - d. After an Event of Default, if Borrower collects any of the Rents, Issues and Profits, it shall do so as the agent of Lender, and Borrower shall hold all such Rents, Issues and Profits in trust for the sole and exclusive benefit of Lender and shall pay them over to Lender within one (1) business day of receipt.
  - e. At any time, Lender may, in its sole discretion, notify any tenant or other parties of this Rent Assignment and may require such tenant or other party to pay all Rents, Issues and Profits directly to Lender, to be applied to the Loan, and no proof of an Event of Default shall be required. Borrower hereby consents to the payment of Rents, Issues and Profits directly to Lender.

- f. Nothing in this Deed of Trust shall impose upon Lender an obligation to produce Rents, Issues and Profits, and Lender shall not be (i) deemed to be a mortgagee in possession; (ii) liable for performing any obligations of Borrower; (iii) liable for waste, mismanagement, neglect, or dangerous or defective condition on or in the Real Property or Improvements; (iv) obligated to lease or continue to lease the Real Property or Improvements or be liable for any loss sustained by Borrower; and (v) liable for the use, occupation, enjoyment or operation of any portion of the Real Property or Improvements.
6. **Assignment of Plans and Specifications.** As additional security for the Loan, Borrower hereby assigns and transfers all of its right, title and interest in and to the Plans and Specifications to Lender. Upon and Event of Default and until such time as Lender provides notice to Borrower that Lender is exercising its rights to complete the development of the Real Property or the construction of Improvements, Lender shall have no obligations under the Plans and Specifications. Lender may further assign the Plans and Specifications and may modify or abandon them in its sole discretion. Upon an Event of Default, Borrower hereby appoints Lender its attorney-in-fact, coupled with an interest, to demand, receive and enforce all of Borrower's rights under the Plans and Specifications and to perform all acts set forth in them, in Lender's sole discretion. This Assignment of Plans and Specifications is for security purposes only.
7. **Collateral—Possession, Use and Maintenance.** The following provisions shall govern the possession, use, and maintenance, by Borrower, of the Collateral:
- a. *Possession and Use.* Until the occurrence of an Event of Default, Borrower may (1) remain in possession and control of the Collateral; (2) use, operate or manage the Collateral; (3) develop the Real Property and construct Improvements; and (4) collect the Rents, Issues and Profits from the Collateral as set forth in Section 4, above. Borrower shall not, however, use the Real Property for agricultural, timber, or grazing purposes or for personal, family, or household purposes.
- b. *Maintenance of the Collateral.* Borrower shall maintain the Collateral in good condition and repair and shall not remove, demolish, or alter the Collateral except as set forth in the Loan Documents or in accordance with any laws, ordinances, regulations or other governmental orders. Otherwise, all changes to the Collateral or to the zoning or land use classification of the Real Property must be approved, in writing, by Lender. Furthermore, Borrower shall not abandon or leave the Collateral unattended and shall do all other acts, which, from the character and use of the Collateral, are reasonably necessary to protect and preserve it.
- c. *Nuisance, Waste.* Borrower shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Collateral or any portion thereof. Without limiting the generality of the foregoing, Borrower shall not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.
- d. *Compliance with Governmental Requirements.* Borrower shall promptly comply and shall cause others who use or occupy the Collateral with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act.
- e. *Taxes and Liens.* Borrower shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Collateral and shall pay when due all claims for work done on or for services rendered or material furnished to the Collateral. Borrower shall maintain the Collateral free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust. Borrower shall, upon demand, furnish to Lender satisfactory evidence of payment of the taxes, assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

8. **Insurance.** Borrower shall maintain or shall cause others to maintain the following insurance in effect at all times with respect to the Collateral, and any other insurance required by Lender or by the Loan Documents:
- a. *Title Insurance.* An extended coverage ALTA Lender's Policy of Title Insurance ("Title Policy"), together with any endorsements which Lender may require, insuring Lender, in the principal amount of the Loan, of the validity and the priority of the lien of the Deed of Trust upon the Property and the Improvements, subject only to matters approved by Lender in writing. During the term of the Loan, Borrower shall deliver to Lender, within 5 days of Lender's written request, such other endorsements to the Title Policy as Lender may reasonably require, including without limitation, a title update endorsement concurrently with each advance or certain advances of loan proceeds;
  - b. *Property Insurance.* A Builders All Risk/Special Form Completed Value (Non-Reporting Form) Hazard Insurance policy, including without limitation, theft coverage and such other coverages and endorsements as Lender may require, insuring Lender against damage to the Property and Improvements in an amount not less than 100% of the full replacement cost at the time of completion of the Improvements. Such coverage should adequately insure any and all Loan collateral, whether such collateral is onsite, stored offsite or otherwise. Lender shall be named on the policy as Mortgagee and named under a Lender's Loss Payable Endorsement (form 438BFU or equivalent);
  - c. *Commercial General Liability.* A policy of Commercial General Liability insurance on an occurrence basis, with coverages and limits as required by Lender, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Property and/or in the Improvements. During the period of any construction, Borrower may cause its contractors and/or subcontractors to maintain in full force and effect any or all of the liability insurance required hereunder. Lender may require that Borrower name Lender as an additional insured on any such policy;
  - d. *Flood Insurance.* A policy of flood insurance, as required by applicable governmental regulations, or as deemed necessary by Lender, in an amount required by Lender, but in no event less than the amount sufficient to meet the requirements of applicable law and governmental regulation.
  - e. *General.* In addition, Lender may require additional insurance in forms or amounts as it determines in its sole discretion. Borrower shall, no less frequently than once a year, provide to Lender insurance certificates or other evidence of coverage in form acceptable to Lender, with coverage amounts, deductibles, limits and retentions as required by Lender. All insurance policies shall provide that the coverage shall not be cancelable or materially changed without 10 days prior written notice to Lender of any cancellation for nonpayment of premiums, and not less than 30 days prior written notice to Lender of any other cancellation or any modification (including a reduction in coverage). Lender may, at its discretion, request a certified copy of any of the policies maintained by Borrower. Each insurance policy shall also include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other Person, and Borrower shall provide Lender with such loss payable or other endorsements as Lender may require. If Borrower fails to provide adequate proof of insurance or allows any of the insurance required by Lender to lapse or be cancelled, Lender may purchase insurance at Borrower's expense to protect Lender's interest, as more fully set forth in the Loan Agreement. All policies of insurance required herein: (a) shall be issued by and maintained with financially sound and reputable insurance companies licensed to do business in the State of Utah, and having a rating of A- VIII or better by the A.M. Best Company and which are not affiliates of Grantor; (b) contain the complete address (or legal description) of the Collateral; (c) be for terms of at least one year; (d) be subject to the reasonable approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid, expiration dates and all other respects; and (e) include a provision naming Lender, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgagee

clause (or lender's loss payable clause), and (3) as the lender's loss payee on all loss of rents or loss of business income insurance policies.

- f. *Notice; Proceeds.* Borrower shall immediately provide Lender notice, in writing, of any damage to or loss of the Collateral, whether covered by insurance or not. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Borrower shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Borrower from the proceeds for the reasonable cost of repair or restoration if Borrower is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid without interest to Borrower as Borrower's interests may appear.
9. **Indemnity.** Borrower shall defend with counsel selected by Lender and Trustee, indemnify, and hold Lender and Trustee harmless, as well as Lender's and Trustee's principals, members, managers, directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, attorney fees and other costs and expenses (collectively a "Claim") that either may incur: (a) in performing any act required or permitted by this Deed of Trust, the Loan Documents, or law; (b) as a result of an Event of Default under this Deed of Trust or the Loan Documents; (c) arising from any obligation of Lender to perform any covenant or condition or the failure of any representation or warranty in any instrument related to the Collateral, other than the Loan Documents; or (d) arising from the exercise of the rights Lender may have under Sections 4 and 5 of this Deed of Trust. Lender shall be entitled to appear with counsel of Lender's choosing in its sole discretion and shall be entitled to settle or compromise any Claim asserted against it. Borrower shall immediately pay to Lender upon demand any amounts owing under this indemnity, together with interest from the date the Claim arose until paid in full at the rate of interest on the principal outstanding balance. The duties set forth in this Section shall survive payment in full or cancellation of the Note and the release or full or partial reconveyance of the Deed of Trust.
10. **Subrogation.** If Lender discharges, in whole or in part, any liens or encumbrances, whether released of record or not, with the proceeds of the Loan or otherwise, Lender shall be subrogated thereto.
11. **Condemnation.** If any proceeding in condemnation is filed, Borrower shall promptly notify Lender in writing, and Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award. If Borrower is the named party in the condemnation, Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Borrower's expense, and Borrower will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation. If all or any part of the Collateral is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.
12. **Representation and Warranties of Borrower.** In addition to those in the Loan Agreement, Borrower makes the following representations and warranties:
- a. *Title to Real Property and Improvements.* Borrower warrants that it holds good and marketable title of record to the Real Property and Improvements in fee simple, free and clear of all liens and encumbrances other than those approved in writing by Lender;

- b. *Title to Personal Property.* Borrower warrants that it holds good and marketable title to the personal property that serves as part of the Collateral, free from security agreements, reservations of title, or conditional sales contracts, and no financing statement affects it other than in Lender's favor;
  - c. *Defense of Title.* Subject to the approved liens and encumbrances, as set forth above, Borrower warrants and shall forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Borrower's title or the interest of Trustee or Lender under this Deed of Trust, Borrower shall defend the action at Borrower's expense. Although Borrower may be the named party in any such proceeding, Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Borrower will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation;
  - d. *Authority.* Borrower has full right, power, and authority to execute and deliver this Deed of Trust to Lender; to pledge, hypothecate and encumber the Collateral; and to assign the Rents, Issues, Profits, Leases, and Plans and Specifications. Upon recording, this Deed of Trust and any financing statement will create a first and prior lien on the Collateral, except as permitted by Lender in writing;
  - e. *Assignments.* Borrower has not made any prior assignments of its rights to the Rents, Issues, Profits, Leases, or Plans and Specifications. In addition, Borrower has provided true and correct copy of the Leases and Plans and Specifications, including all amendments, exhibits, and addenda thereto; no default exists under any of them; and no fact or circumstance exists that would constitute a default but for the lapse of time or giving of notice or both;
  - f. *Business Loan.* The Loan is a commercial or business loan transaction and is solely for the purpose of carrying on the business of Borrower and none of the proceeds of the Loan will be used for the personal, family or household purposes of Borrower, or principally or primarily for agricultural, timber, or grazing purposes. Neither Borrower nor any Related Party shall use the Real Property or Improvements as a dwelling, as that term is defined by the Truth in Lending Act, 15 U.S.C. Section 1602(v), during the term of the Loan or thereafter. As used in this Deed of Trust, "Related Party" means Borrower's principals, owners, members, partners, shareholders, directors, managers, officers, or Guarantors or to or from affiliated entities or the immediate family of any such person listed herein (each a "Related Party" and collectively "Related Parties");
  - g. *Compliance with Laws.* Borrower warrants that the Collateral and Borrower's use of the it complies with all existing applicable laws, ordinances, and regulations of governmental authorities;
  - h. *CC&Rs; Plats.* Except as otherwise disclosed in the Plans and Specifications, Borrower has not and will not file, record or amend any covenants, conditions and restrictions, plats, surveys, or association governance documents without the consent of Lender;
  - i. *Survival.* All representations, warranties, and agreements made by Borrower in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness under the Loan Documents or under the terms of any Related Loan shall be paid in full.
13. **Reconveyance/Release.** Lender may also partially reconvey or release certain of the Collateral in Lender's sole discretion provided that (a) Borrower is not in default on the Loan or any Related Loans; (b) Lender has received funds necessary for it to release a portion of the Collateral; and (c) the portion of the Collateral that will be released can be conveyed separately from the remaining Collateral at the time of reconveyance. If Lender partially reconveys or releases any portion of the Collateral, Borrower shall not be released from the remaining Obligations (as that term is defined in the Deed of Trust) under the Loan Documents. These provisions on partial reconveyance notwithstanding, Lender always hereby reserves the right to require full



satisfaction of all Obligations before releasing any of the Collateral. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness of any such matters or facts. All reconveyances shall be without warranty to the grantee. Any reconveyance fees, recording fees and other expenses of reconveyance shall be paid by Borrower. If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Borrower under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Borrower suitable statements of termination of any financing statement on file evidencing Lender's security interest in the personal property that serves as part of the Collateral.

14. **Events of Default.** Each of the following events, at Lender's option, shall constitute an Event of Default under this Deed of Trust:
- a. *Monetary Default.* Borrower's failure to pay when due any sums payable under the Note or any of the other Loan Documents or Borrower's failure to deposit any Borrower's Funds as and when required under this Agreement; or
  - b. *Performance Default.* Borrower's failure to perform any obligation, covenant or condition under the Note or any of the other Loan Documents whether or not identified as a separate and distinct Event of Default under this Section 14; provided, however, that if a cure period is provided for the remedy of such failure, Borrower's failure to perform will not constitute an Event of Default until such date as the specified cure period expires; or
  - c. *Construction.* The failure to commence construction or the suspension or stoppage of construction by Borrower for a continuous period of more than sixty (60) days; the failure to adhere to the Plans and Specification and the Financial Requirements Analysis without Lender's written approval; or the failure to complete the Improvements in accordance with the Plans and Specifications and in a timely fashion; or
  - d. *Improper Use of Funds.* Any improper use or misapplication of Loan disbursements, as set forth in the Financial Requirements Analysis; or
  - e. *Inadequate Funds.* The sum of any Borrower's Funds plus all Loan funds that have not been disbursed is not sufficient, in Lender's sole discretion, to complete the Improvements; or
  - f. *Insurance.* Borrower fails to maintain the insurance required by the Loan Documents or there is a uninsured loss to the Property or Improvements and Borrower fails to repair, or if covered by insurance, Borrower fails or otherwise refuses to release insurance proceeds to Lender; or
  - g. *Inspection.* Failure of Borrower to allow Lender to conduct inspections or enter the Property to verify proper use of disbursements or compliance with the Plans and Specification; or
  - h. *Third Party Agreements.* Any default for failure to comply with the obligations of any agreement with third parties that has or will have, in Lender's sole discretion, a materially adverse effect on their ability to meet their obligations set forth in the Loan Documents; or
  - i. *Lien; Attachment; Condemnation.* (i) The recording of any claim of lien or other monetary encumbrance against the Property, the Improvements, or the materials or fixtures, or the service upon Lender of a withhold payment notice, and the continuance of such claim of lien for 20 calendar days after such recording or service or 5 days after Lender's demand, whichever occurs first, without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to Lender; or (ii) the condemnation, seizure or appropriation of, or occurrence of uninsured casualty damage with respect to, any material portion of the Property or Improvements; or (iii) the sequestration or attachment of, or any levy or execution upon, any of the Property or Improvements, or any other collateral provided by Borrower or any other party under any of the Loan Documents is not released, expunged or dismissed within 20 days; or

- j. *Representations and Warranties; Finances.* (i) The failure of any representation or warranty of Borrower in any of the Loan Documents or by any Guarantor in the Guaranty and the continuation of such failure for more than 10 days after written notice to Borrower from Lender requesting that Borrower cure such failure; or (ii) any material adverse change in the Property, Improvements, or the financial condition of Borrower, any Guarantor, or any indemnitor from the financial condition represented to Lender; or
- k. *Bankruptcy; Insolvency; Dissolution.* (i) The filing by Borrower, any Guarantor, any indemnitor, or any partner or member of Borrower of a petition for relief under any present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing against Borrower, Guarantor, any indemnitor, or any partner or member of Borrower of an involuntary proceeding under any present or future bankruptcy or debtor relief law and the failure of Borrower to effect a full dismissal of such proceeding within 30 days after the date of filing such proceeding; (iii) a general assignment by Borrower, Guarantor, any indemnitor, or any partner or member of Borrower for the benefit of creditors; (iv) the appointment of a receiver, trustee, custodian or liquidator for Borrower, Guarantor, any indemnitor, or any partner or member of Borrower; (v) Borrower or any Guarantor ceases or fails to be solvent, or generally fails to pay, or admits its inability to pay, its debts, whether to Lender or any third party, as they become due, whether at stated maturity or otherwise; (vi) Borrower voluntarily ceases to conduct its business in the ordinary course; (vii) Borrower takes any action to effectuate or authorize any of the foregoing; or (viii) Lender believes that Borrower cannot or will not make payment or perform as required, that the value of the collateral is or will be materially impaired, or otherwise believes that it is insecure;
- l. *Borrower; Key Person or Entity.* The retirement, death, incapacity, withdrawal, or disassociation of Borrower, if an individual; the death or incapacity of any Guarantor; or the retirement, death, incapacity, withdrawal, or disassociation of any of the individuals identified in the Resolutions as having authority to bind Borrower or any principal who owns greater than 20% of Borrower and Borrower's failure to provide a substitute or replacement acceptable to Lender within 30 days after the occurrence of any such retirement, death, incapacity or withdrawal; or
- m. *Transfer of Borrower Assets.* The sale, assignment, pledge, hypothecation, mortgage or transfer of all or a substantial portion of the assets of Borrower or any merger, consolidation, liquidation, sale, transfer, or any material change in the ownership, management, control, or structure of Borrower; or
- n. *Transfer or Impairment of Collateral.* Any transfer, lease, or conveyance of the collateral securing Borrower's obligations under the Loan Documents; any additional encumbrance (monetary or otherwise) on title to the collateral; or the commencement of any action (including without limitation, actual or threatened litigation or claims related to permitting or zoning) against Borrower or any Guarantor that Lender believes, in its sole discretion, threatens its security interest in the collateral or Borrower's ability to meet its obligations; or
- o. *Cross-Default.* Any Default by Borrower or any Affiliate under the terms of any Related Loans; or
- p. *Resolutions.* The failure of any certification in the Resolutions to be accurate at any time, and the inaccuracy of any of the Resolutions; or
- q. *Guarantor.* The occurrence of any of these events of Default with respect to any Guarantor; the failure of Guarantor to meet his or her obligations under the Guaranty; the revocation or disavowal by Guarantor of the Guaranty; or
- r. *Assignment.* Borrower's assignment of the Loan, the rights and obligations set forth in the Loan Documents, or any portion of any disbursements without the prior written consent of Lender, which Lender may withhold for any reason in its sole discretion; or

- s. *Other Obligations.* Borrower or any Guarantor shall default in any obligation to Lender, whether direct or indirect, absolute or contingent; or
  - t. *Defective Collateralization.* This Deed of Trust, any financing statement, or any of the Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason; or
  - u. *Imposition of Taxes.* The imposition of any Taxes. Taxes, for purposes of this subsection means: (i) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (ii) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (iii) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (iv) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Borrower either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.
15. **Rights and Remedies.** Upon an Event of Default specified herein or in the Loan Documents or upon an Event of Default under the terms of any Related Loan, Lender may, in its sole discretion and in addition to all other remedies permitted under the Loan Documents for this Loan or the terms and conditions of any Related Loan and at law or equity, take any or all of the following actions:
- a. *Acceleration.* (i) Declare all sums owing to Lender under the Note, this Deed of Trust and the other Loan Documents immediately due and payable, after which time such sums shall, at Lender's option, bear interest at the Default Rate (as defined in the Note); (ii) exercise all rights and remedies set forth in the Loan Documents and applicable law; and (iii) declare all sums owing and exercise all rights and remedies provided by any Related Loans;
  - b. *Application of Borrower Funds.* Apply Borrower's Funds, if any, to the sums owing under the Loan Documents;
  - c. *Termination of Disbursements.* Terminate Borrower's right to receive additional disbursement temporarily or permanently;
  - d. *Entry.* Enter upon or permit others to enter the Real Property and Improvements for purposes of inspecting it and the Improvements, and if Lender determines, in its sole discretion, that the Improvements or the materials fail to meet the requirements of the Plans and Specifications, permits, or the law, it may stop work, stop disbursements, and require corrections. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements until such time as Lender notifies Borrower in writing that the nonconforming condition has been corrected. Borrower shall notify Lender immediately upon receipt of "red tag" or "stop order" notices from any federal, state, county or municipal building inspector or of unsatisfactory compliance with any applicable building code, and in such event Borrower shall provide Lender a full and complete written explanation of the nature of such noncompliance. Lender may enter regardless of whether it has accelerated the Loan;
  - e. *Complete Improvements.* With or without legal process, take possession of the Property and remove Borrower and its employees, contractors, suppliers or other agents through any available means, and complete construction of the Improvements according to the Plans and Specifications. To that end, Lender may use any undisbursed Loan funds. If the remaining funds are insufficient to complete construction, then Lender may, in its sole discretion, extend additional funds to protect its security interest in and to the collateral. Those funds and any costs and expenses incurred by Lender, shall be subject to the Loan Documents as an additional extension of credit and shall be immediately due and payable, all of which shall be secured by the Deed of Trust. For

these purposes, Borrower irrevocably appoints Lender as its attorney in fact, which agency is coupled with an interest. As attorney in-fact, Lender may, in Borrower's name, take or omit to take any action Lender may deem appropriate, including, without limitation, exercising Borrower's rights under the Loan Documents and all contracts concerning the Property and/or Improvements;

- f. *Cross-Default.* Place this Loan and any Related Loans in default and exercise any and all of the rights and remedies Lender may have; or
- g. *Third Party Payments.* Make any payments to third parties that Borrower has not paid, either from undisbursed Loan funds, Borrower's Funds, or other funds extended by Lender to protect the Collateral. Additional funds provided by Lender shall be subject to the Loan Documents as an additional extension of credit and shall be immediately due and payable, together with interest at the Default rate, all of which shall be secured by the Deed of Trust.
- h. *Appoint Receiver.* Petition a court of competent jurisdiction to appoint a general or custodial receiver to take possession of all or any part of the Collateral, with all of the powers granted by law as well as the Loan Documents, including without limitation, the power to protect and preserve the it, to operate it preceding or pending foreclosure or sale, and to collect the Rents, Issues, and Profits from it and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Lender may seek the appointment of a receiver regardless of whether it has accelerated the Loan. The appointment of a receiver hereunder may be ex parte without notice to Grantor, where permitted by state law, and may be exercised as a matter of right if there is a default, regardless of the value of the collateral and regardless of the solvency of any person liable for the payment of the secured indebtedness. Grantor hereby expressly waives the right to any notice or hearing prior to appointment of receiver;
- i. *Collect Rents.* Take possession of and manage and operate the Collateral; lease or sell the Collateral; and collect the Rents, Issues and Profits, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Collateral to make payments of rent or use fees directly to Lender. If the Rents, Issues and Profits are collected by Lender, then Borrower irrevocably designates Lender as Borrower's attorney-in-fact to endorse instruments received in payment thereof in the name of Borrower and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver. Lender may exercise the remedies set forth in this subsection regardless of whether it has accelerated the Loan;
- j. *UCC Remedies.* Exercise all the rights and remedies of a secured party under the Uniform Commercial Code in effect in the state in which the Real Property is located, including, without limitation, the right to require Grantor, at its expense, to assemble the Collateral and make it available to Lender at a location reasonably acceptable to Lender;
- k. *Judicial Action.* Commence and maintain an action in any court of competent jurisdiction to foreclose this instrument or seek specific performance. If Lender elects to foreclose by judicial action and the Collateral is sold at a foreclosure sale, the purchase may, during any applicable redemption period, make repairs or alterations to the Collateral as may be reasonably necessary to operate, preserve, protect, and insure it. Any sums expended, together with interest thereon at the default rate or the maximum rate permitted by law, shall be added to a become a part of the amount required to be paid for redemption. In addition, Lender may seek a deficiency if the proceeds are insufficient to satisfy the foreclosure judgment and may execute thereon;

- l. *Power of Sale.* Cause the Trustee to invoke Trustee's power of sale and sale the Collateral in whole or in part and in any combination or manner permitted by the Loan Documents, The terms of any Related Loan, or the law. With respect to all or any part of the Real Property or any of the personal property that makes up the Collateral or both, the Trustee shall have the right to exercise its power of sale and to foreclose by notice and sale under the laws relating to non-judicial sales in the state in which the Real Property is located. Lender and Trustee shall have the right to continue or discontinue any sale or conduct more than one sale, and any person or entity may bid and purchase at such a sale, including Borrower and Lender, which may credit bid. Trustee shall convey the Collateral, whether in whole or in part, without warranty;
  - m. *Realization.* Resort to and realize upon or waive the security granted by the Loan Documents, any terms of a Related Loan, or any additional security held by Lender in the future in such order and manner as Trustee and Lender or either of them determine, in their sole discretion. Resort to the Collateral securing this Loan or any Related Loan may be taken concurrently or successively and in one or more judicial or non-judicial proceedings or both;
  - n. *Attorneys' Fees; Expenses.* Recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the default rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, Lender's attorneys' fees and Lender's legal expenses and costs, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, any anticipated post-judgment collection services, the cost of searching records, title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law;
  - o. *Extensions, Modifications, Additional Collateral.* Extend or modify the terms of the Loan or any Related Loan, increase the amount of the Indebtedness, require or accept additional collateral, or release all or part of the Collateral or the security for any Related Loans. No action or inaction under this subsection shall in any way affect the liability of Borrower or any other person for the Obligations secured hereby;
  - p. *Election of Remedies; Not Exclusive.* Elect to pursue the remedies set forth in the Loan Documents, pursuant to the terms of any Related Loan, or provided at law or equity. Election of a particular remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower under this Deed of Trust, after Borrower's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Trustee and Lender shall be entitled to enforce remedies concurrently or separately and in the order and manner the determine, in their sole discretion. No remedy provided to Lender or Trustee is exclusive, and they shall all be cumulative.
  - q. *Rights and Powers of Trustee.* Trustee shall have all of the rights and duties of Lender as set forth in this section. By way of illustration and not limitation, Trustee shall have the power of sale set forth in this Deed of Trust and shall also have the power to (i) consent to the platting of the Real Property; (ii) grant any easement or create any covenant, condition, or restriction affecting the Real Property; (iii) accept additional security or collateral to secure the Obligations; (iv) join in any extension, subordination, or other agreement affecting this Deed of Trust; or (v) reconvey, without any warranty whatsoever, all or any part of the Collateral, upon Lender's written request.
16. **ASSIGNMENT; SALE; FURTHER ENCUMBRANCES—DUE ON SALE.** The parties acknowledge and agree that the Obligations are personal to Borrower and that Lender relied on the identity and creditworthiness of Borrower, its principals, members, shareholders, employees, and guarantors as well as Borrower's experience, expertise, and financial condition in extending credit pursuant to the Loan

Documents. Except as otherwise set forth in the Loan Documents, Borrower shall not, therefore, sell or transfer (as defined below) any of its right, title or interest in and to the Collateral or transfer any ownership in itself that would result in a material change of control. Any attempt to effectuate any of the foregoing without seeking Lender's consent (which may be withheld for any reason in Lender's sole discretion) shall constitute an Event of Default. Upon the occurrence of any of the events set forth in this Section and in addition to all other rights and remedies contained in the Loan Documents, Lender may, at Lender's option, (A) declare immediately due and payable all sums secured by this Deed of Trust or (B) increase the interest rate provided for in the Note or other document evidencing the Indebtedness and impose such other conditions as Lender deems appropriate. A "sale or transfer" means the conveyance of Collateral or any right, title or interest in it; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Collateral, or by any other method of conveyance of an interest in the Collateral. If any Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Borrower. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or applicable state law.

17. **Cooperation; Further Assurances; Attorney-in-Fact.** Borrower shall cooperate with Lender or Trustee to correct any defect, error, or omission that may be discovered in the Loan Documents. In addition, upon request of Lender, Borrower will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Borrower's obligations under the Loan Documents, and (2) the liens and security interests created by the Loan Documents as first and prior liens on the Real Property, whether now owned or hereafter acquired by Borrower. Unless prohibited by law or Lender agrees to the contrary in writing, Borrower shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph. If Borrower fails to take any of the actions set forth in this Section, Lender may do so for and in the name of Borrower and at Borrower's expense. To that end, Borrower hereby irrevocably appoints and authorizes Lender, as Borrower's attorney in fact, which agency is coupled with an interest, to execute and/or record in Lender's or Borrower's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents. The powers of attorney granted by Borrower to Lender in this Agreement or the Loan Documents shall be unaffected by the disability of the principal so long as any portion of the Loan remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event.
18. **General Provisions.** The parties do hereby further agree as follows:
  - a. *Notices.* All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be sent to the necessary parties at the addresses set forth at the beginning of this Deed of Trust or any other address that a party may designate in writing. All notices required or permitted by the Loan Documents shall be effective (i) three (3) days after deposit if sent by U.S. mail, postage prepaid, registered or certified, return receipt requested; (ii) the next day following deposit if sent by nationally recognized overnight delivery service; or (iii) upon delivery, if delivered in person to the appropriate party or the party's address.
  - b. *Successor Trustee.* Lender may appoint a successor trustee by an instrument executed and acknowledged by Lender and recorded in the county in which this Deed of Trust was recorded, and upon recordation, the successor trustee shall be vested with the same powers, rights, and duties of the Trustee as if originally named as trustee hereunder.

- c. *Relationship of Parties.* The relationship of Borrower and Lender under the Loan Documents is, and shall at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Collateral, except as expressly provided in this Deed of Trust and the other Loan Documents.
- d. *Immediately Available Funds.* All amounts payable by Borrower to Lender shall be (a) payable only in United States currency in immediately available funds, and (b) received by Lender at 11250 Kirkland Way Suite 100, Kirkland, WA 98033 or at such other places as may be designated in writing by Lender, no later than 11 AM Pacific Standard Time or Pacific Daylight Time, as applicable. Any amounts received after such time shall be credited the next business day.
- e. *Lender's Agents.* Lender may designate an agent or independent contractor to exercise any of Lender's rights under this Deed of Trust and any of the other Loan Documents. Any reference to Lender or Beneficiary in any of the Loan Documents shall include Lender's agents, employees or independent contractors. Borrower shall pay the costs of such agent or independent contractor either directly to such person or to Lender in reimbursement of such costs, as applicable.
- f. *WAIVER OF RIGHT TO TRIAL BY JURY.* EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY. THE PARTIES FURTHER AGREE THAT ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTIONS, INCLUDING WITHOUT LIMITATION, THOSE SOUNDING IN TORT OR CONTRACT, SHALL BE BROUGHT IN THEIR INDIVIDUAL CAPACITIES AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY REPRESENTATIVE OR CLASS PROCEEDING.
- g. *Severability.* If any provision or obligation under this Deed of Trust or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force and effect; provided, however, that if the rate of interest or any other amount payable under the Note or this Agreement or any other Loan Document, or the right of collectability therefor, are declared to be or become invalid, illegal or unenforceable, Lender's obligations to make advances under the Loan Documents shall not be enforceable by Borrower. In addition, if the lien created by this Deed of Trust is invalid, void, or unenforceable as to any of the Obligations or Collateral, then the unsecured or partially secured portion shall be paid completely before any payments are credited to the secured Obligations that remain.
- h. *Heirs, Successors and Assigns.* Except as otherwise expressly provided under the terms and conditions of this Deed of Trust, the terms of the Loan Documents shall bind and inure to the benefit of the heirs, successors and assigns of the parties.

- i. *Time.* Time is of the essence of each and every term of this Deed of Trust and those of the Loan Documents.
- j. *Governing Law.* This Deed of Trust shall be governed by and construed and enforced in accordance with the laws of the state where the Real Property is located, except to the extent preempted by federal laws and without regard to its conflicts of law provisions. Borrower and all persons and entities in any manner obligated to Lender under the Loan Documents hereby consent to the jurisdiction of any federal or state court within the state where the Real Property is located in which venue is proper, and they also consent to service of process by any means authorized by the law of such state or federal law.
- k. *Integration; Interpretation.* The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing.
- l. *Joint and Several Liability.* If more than one party executed this Deed of Trust or any of the Loan Documents, the liability of all persons and entities obligated in any manner under this Deed of Trust and any of the Loan Documents shall be joint and several.
- m. *Form of Documents.* The form and substance of all documents, instruments, and forms of evidence to be delivered to Lender under the terms of the Loan Documents and any of the other Loan Documents shall be subject to Lender's approval and shall not be modified, superseded or terminated in any respect without Lender's prior written approval.
- n. *No Third-Party Beneficiaries.* No person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.
- o. *Merger.* No merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Collateral at any time held by or for the benefit of Lender in any capacity shall occur without the written consent of Lender.
- p. *Actions.* Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents, may commence, appear in or defend any action or proceeding purporting to affect the Obligations, Collateral, or the Loan Documents and Borrower shall immediately reimburse Lender upon demand for all such expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs.
- q. *Marshalling.* To the extent permitted by applicable law, Borrower hereby waives any and all rights to have the Property marshalled.
- r. *Waiver of Homestead Exemption.* Grantor hereby acknowledges and confirms that no portion of the Collateral constitutes any portion of Grantor's homestead, and this lien is being granted for commercial purposes. To the extent permitted by law, Grantor hereby waives all rights to any homestead or other exemption to which Grantor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.
- s. *Headings.* All articles, sections or other headings appearing in this Deed of Trust and any of the other Loan Documents are for convenience of reference only and shall be disregarded in construing this Deed of Trust and any of the other Loan Documents.
- t. *Counterparts; Digital Images and Signatures.* Except for the Note, this Deed of Trust, and any other Loan Documents that require an original signature or notarial acknowledgment, and at Lender's sole discretion, the remainder of the Loan Documents may be executed electronically or digitally and in any number of counterparts, each of which shall be an original, but such



counterparts together shall constitute one and the same Agreement. The parties agree that a digital image of this Agreement shall constitute true and correct original, including without limitation images in the form of a PDF, JPEG, GIF file, or other electronic version.

- u. *No Waiver or Cure.* Lender's exercise of any right or remedy shall not constitute a cure of any Event of Default unless all sums then due and payable to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver or delay in the exercise of any term, covenant, or condition of any of the Loan Documents by Lender shall constitute (i) a waiver of any other term, covenant, or condition of the Loan Documents; or (ii) a continuing waiver. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms. Any funds expended by Lender in the exercise of its rights or remedies under the Loan Documents shall be subject to the Loan Documents as an additional extension of credit and shall be immediately due and payable, all of which shall be secured by this Deed of Trust.
- v. *Additional Security or Collateral.* If Lender shall, at any time, hold additional security or collateral for any of the Obligations, all such security or collateral shall be held cumulatively, and Lender may enforce all of the remedies set forth in this Deed of Trust against the additional security or collateral either before, concurrently, or after enforcing its rights and remedies against the Collateral. If Lender requires additional security or collateral, none of the provisions of this Deed of Trust shall be diminished nor shall the additional security or collateral impair the liability of any of the parties, including any guarantors, for the payment of the Indebtedness.
- w. This Deed of Trust shall not be subject to any rule of contract, interpretation or construction requiring that the same be construed against the drafting party and Grantor hereby waives and relinquishes the benefit of any such rule of contract, interpretation or construction.
- x. *Exhibits Incorporated.* All exhibits, schedules or other items attached hereto are incorporated into this Agreement by this reference.

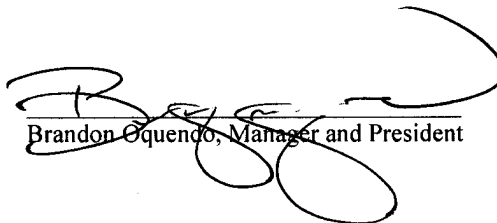
**NOTICES TO BORROWER/GRANTOR:**

**THE NOTE CONTAINS PROVISIONS THAT ALLOW BENEFICIARY TO INCREASE OR DECREASE THE RATE OF INTEREST AND THEREFORE, INCREASE OR DECREASE THE PERIODIC PAYMENTS REQUIRED BY THE NOTE.**

**BORROWER/ GRANTOR**

Oquendo Investments LLC, A Utah Limited Liability Company

By:



Brandon Oquendo, Manager and President

[ NOTARIAL ACKNOWLEDGMENT FOLLOWS ]



**EXHIBIT A - DESCRIPTION OF PROPERTY**

Lots 1 and 2, LENNON LANE SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

REQUEST FOR FULL RECONVEYANCE

*To be used only when all obligations have been paid under the note and this Deed of Trust.*

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated: \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Mail reconveyance to:

**Attn: Roxanne Smith**

Level Capital LLC

11250 Kirkland Way, Suite 100

Kirkland, Washington 98033

Do not lose or destroy this Deed of Trust OR THE NOTE, which it secures. Both must be delivered to the Trustee before cancellation will be made.