

**LOAN AGREEMENT**

**by and between**

**THE CITY OF SAN LEANDRO**

**and**

**Dan and Gina Dillman**

14808 E. 14<sup>th</sup> Street

APN: 077E-1593-008-00

## Exhibits

- A Property Description
- B Promissory Note
- C Deed of Trust
- D Loan Amortization Schedule
- E Insurance Requirements

## LOAN AGREEMENT

This Loan Agreement (this “**Agreement**”) is entered into effective as of October \_\_\_\_, 2017 (the “**Effective Date**”) by and between Dan and Gina Dillman, a married couple, (the “**Borrower**”) and the City of San Leandro, a California charter city (the “**Lender**”). Lender and Borrower are hereinafter collectively referred to as the “**Parties.**”

### RECITALS

A. Borrower is the owner of that certain real property located at 14808 East 14<sup>th</sup> Street, in San Leandro, California, Alameda County Assessor’s Parcel Number 77E-1593-008-00 and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Borrower has requested and the Lender has agreed to provide a loan in the amount of Four Hundred Thousand Dollars (\$400,000) (the “**Loan**”) pursuant to the terms and conditions hereof.

C. Concurrently herewith, Borrower shall execute a promissory note (the “**Note**”) in the amount of the Loan, and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”), which shall provide Lender with a security interest in the Property. This Agreement, the Note, and the Deed of Trust are collectively hereinafter referred to as the “**Loan Documents.**”

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### ARTICLE I

#### LOAN TERMS

1.1 LOAN AND NOTE. Lender agrees to loan to Borrower, and Borrower agrees to borrow from and repay to Lender, the sum of four hundred thousand dollars (\$400,000) upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note, which shall be dated as of the Effective Date and executed by Borrower substantially in the form attached hereto as Exhibit B. The Note shall be secured by the Deed of Trust executed by Borrower as Trustor for the benefit of the Lender substantially in the form attached hereto as Exhibit C. Provided that Borrower has complied with all conditions precedent to disbursement of the Loan set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. Lender shall disburse Loan Proceeds only for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; PAYMENT DATES; MATURITY DATE.

(a) Interest. Interest shall accrue on the outstanding principal balance of this Note at the rate of three percent (3%) simple interest per annum commencing upon the

date of disbursement thereof. Interest shall be calculated on the basis of three hundred sixty five (365) days, and charged for the actual number of days elapsed.

(b) Payment Dates; Maturity Date. Commencing June 1, 2018 (the “**First Payment Date**”), and on the First (1st) day of the sixth (6<sup>th</sup>) month of each calendar year thereafter, Borrower shall make semiannual payments of interest. The entire indebtedness including any remaining interest and the principal, shall be due and paid in full upon the Maturity Date (defined below). The entire outstanding principal balance of this Note, together with any accrued interest and all other sums accrued hereunder shall be payable in full on the thirtieth (30) anniversary of the date of this Note (the “**Maturity Date**”). Payments shall be credited first to any unpaid late charges and other costs and fees then due, and then to accrued interest. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower.

1.3 SECURITY. As security for repayment of the Note, Borrower shall execute the Deed of Trust in favor of Lender as beneficiary pursuant to which Lender shall be provided a lien against Borrower’s interest in the Property. The Deed of Trust shall be dated as of the Effective Date, shall be substantially in the form attached hereto as Exhibit C, and shall be recorded in the Official Records of Alameda County (“Official Records”). The Deed of Trust may be subordinated to such liens and encumbrances as Lender shall approve in advance and in writing.

1.4 PREPAYMENT; ACCELERATION.

(a) Prepayment. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

(b) Due on Transfer. Unless Lender agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer, absent the prior written consent of Lender, of all or any part or interest in the Property. “**Transfer**” shall include any assignment, sale, lease or other conveyance of the Property.

## ARTICLE II

### USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Borrower shall use the proceeds of the Loan (“**Loan Proceeds**”) solely and exclusively to payoff the current mortgage on the Property.

2.2 DISBURSEMENT OF PROCEEDS. Provided that Borrower has satisfied all of the conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed to Borrower within thirty (30) days of the Effective Date.

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

Lender's obligation to fund and disburse the proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's execution and delivery to Lender of this Agreement, the Note, and the Deed of Trust;

(b) Recordation of the Deed of Trust in the Official Records of Alameda County;

(c) No material adverse change as determined by Lender in its reasonable judgment shall have occurred in the condition of the Property or in the financial or other condition of Borrower since the date of this Agreement.

(d) All materials deficiencies, as determined by the Lender, on the title of the real property that is the subject of the Deed of Trust have been remedied, paid, or corrected to the satisfaction of Lender.

2.4 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provision of this Agreement, the Lender shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties set forth in this Agreement to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 2.3 have not been satisfied within seven (7) days following the Effective Date, unless an extension of such date is approved by Lender in writing; or
- (iv) the occurrence of any Event of Default hereunder.

### **ARTICLE III**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 Borrower makes the following representations, warranties and covenants and acknowledges that Lender is relying thereupon in making the Loan:

(a) LEGAL STATUS; AUTHORITY; OWNERSHIP. Borrower is the owner of the Property, subject only to liens, encumbrances, easements, restrictions, conditions and other matters of record or disclosed in writing to Lender.

(b) NO VIOLATION. The execution of the Loan Documents and Borrower's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Borrower, and when executed and delivered will each constitute a valid and binding obligation of Borrower, enforceable in accordance with the respective terms thereof.

(d) LITIGATION. There are no pending or to Borrower's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower or Borrower's interest in the Property.

(e) COMPLIANCE WITH LAWS. Borrower is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees applicable to the Property or to Borrower in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety and employment laws. Borrower has received no notice from any governmental authority regarding any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not been corrected, and no condition on the Property violates any Applicable Law.

(f) DISCLOSURE. No representation or warranty made by Borrower in this Agreement or in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading. There is no fact known to Borrower which has or might reasonably be anticipated to have a material adverse effect on the assets or financial condition of Borrower which has not been disclosed to Lender in writing.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS. Borrower covenants that it shall use the Loan Proceeds solely for the purpose set forth in Section 2.1.

4.2 PUNCTUAL PAYMENT. Borrower covenants to punctually pay the principal balance of the Note and interest (if any) accrued thereon at the times and place and in the manner specified in the Note.

4.3 ACCOUNTING RECORDS; PROPERTY INSPECTION. Borrower covenants to maintain accurate books and records relating to the Loan in accordance

with standard accounting principles consistently applied, and to permit the Lender, during business hours and upon reasonable notice to inspect, audit and examine such books and records and to inspect the Property during normal business hours upon reasonable notice to ensure compliance with this Agreement.

4.4 COMPLIANCE WITH LAWS. Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Borrower shall comply with all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

4.5 INSURANCE. Borrower shall maintain and keep in force at Borrower's expense, insurance coverage with respect to the Property in accordance with the requirements set forth in Exhibit E attached hereto and incorporated herein.

4.6 FACILITIES. Borrower shall keep the Property and any improvements thereon, and the personal property used in Borrower's operations, in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property and improvements shall be preserved and maintained.

4.7 INDEMNIFICATION. Borrower shall indemnify, defend (with counsel approved by Lender), and hold harmless Lender and its elected and appointed officers, agents, and employees, consultants and contractors (collectively, the "**Indemnitees**"), from and against, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, actions, suits, judicial or administrative proceedings, injunctive or other relief, expenses and charges (including attorneys' fees and court costs) (collectively "**Claims**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the improvements thereon, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations, in connection with the Property. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the Loan.

4.8 TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Borrower in relation to the Property except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Lender for

eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

## ARTICLE V

### EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for fifteen (15) days.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding in bankruptcy; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

(d) If the Borrower fails to maintain insurance as required pursuant to the Loan Documents, and Borrower fails to cure such default within ten (10) calendar days of receipt of notice from Lender.

(e) If any representation or warranty contained in the Loan Documents or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds is false or misleading in any material adverse respect when made.

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan.

(g) If the Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for fifteen (15) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default



after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

(h) If Borrower, without the express written consent of Lender, creates, takes, agrees to, suffers to exist, or enters into any mortgage, lien, charge, or encumbrance, including liens arising from judgements on the Property. This includes Workers' Compensation, unemployment, Internal Revenue Service, liens or mortgages secured by a second deed of trust upon the Property, state, local, mechanic, and any other liens of any type.

## **ARTICLE VI**

### **REMEDIES**

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, Lender shall have all remedies available to it under law or equity, including, but not limited to the following, and Lender may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- i) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- ii) Seek specific performance to enforce the terms of the Loan Documents;
- iii) Foreclose on the Property pursuant to the Deed of Trust;
- iv) Pursue any and all other remedies available under law or equity to enforce the terms of the Loan Documents and Lender's rights thereunder.

6.2 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. Lender may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

## **ARTICLE VII**

### **MISCELLANEOUS**

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or

to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

**Lender:** City of San Leandro  
835 East 14th Street  
San Leandro CA 94577  
Attn: City Manager

**Borrower:** Dan and Gina Dillman  
350 Williams Street  
San Leandro, CA 94577

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver such other documents and instruments, and take such other actions, as either shall reasonably request may be necessary to carry out the intent of this Agreement.

7.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the “**Property Jurisdiction**”). Borrower agrees that any controversy arising under or in relation to this Agreement or any other Loan Document shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venues to which it might be entitled by virtue of domicile, habitual residence or otherwise.

7.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, Lender’s obligation to make the Loan is personal to Borrower, and shall not be assignable by Borrower by operation of law or otherwise absent the express written consent of Lender, and any such assignment by operation of law or otherwise shall be void.

7.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or

contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through E attached hereto are incorporated herein by reference as though fully set forth herein.

7.13 SURVIVAL. All representations made by Borrower herein and the provisions of Sections 4.7 and 4.8 hereof shall survive the expiration or termination of this Agreement and the making and repayment of the Loan. The representations of Borrower made herein have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

7.14 JOINT AND SEVERAL LIABILITY OF BORROWER. Because Borrower is composed of two individuals, each individual shall be jointly and severally liable for all obligations herein.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be duly executed as of the date first written above.

**BORROWER:**

\_\_\_\_\_  
Gina Dillman

\_\_\_\_\_  
Dan Dillman

**LENDER:**

**CITY OF SAN LEANDRO**

\_\_\_\_\_  
Chris Zapata, City Manager

**Attest:**

\_\_\_\_\_  
Tamika Greenwood, City Clerk

**Approved as to budget authority:**

\_\_\_\_\_  
David Baum, Finance Director

**Approved as to form:**

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

\_\_\_\_\_  
Account Number

Exhibit A

**PROPERTY DESCRIPTION**

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

PORTION OF LOTS 6, 7 AND 8, BLOCK 15, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF "TRACT 704", EDEN TOWNSHIP, FILED MAY 11, 1945, MAP [BOOK 11, PAGES 16, 17 AND 18](#), ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEASTERN LINE OF EAST 14TH STREET, AS SHOWN ON SAID MAP, AT THE MOST SOUTHERN CORNER OF SAID LOT 8; AND RUNNING THENCE ALONG SAID LINE OF EAST 14TH STREET, NORTH 49° WEST 66.10 FEET; THENCE NORTH 41° EAST, 135.50 FEET; THENCE NORTH 49° WEST, 33.90 FEET TO THE SOUTHEASTERN LINE OF 148TH AVENUE, AS SHOWN ON SAID MAP; THENCE ALONG THE LAST NAMED LINE, NORTH 41° EAST, 6.50 FEET; THENCE SOUTH 49° EAST, 33.90 FEET; THENCE NORTH 41° EAST, 33 FEET TO THE NORTHEASTERN LINE OF SAID LOT 6; THENCE ALONG THE LAST NAMED LINE, SOUTH 49° EAST, 66.10 FEET TO THE SOUTHEASTERN LINE OF SAID BLOCK 15; AND THENCE ALONG THE LAST NAMED LINE, SOUTH 49° WEST, 175 FEET TO THE POINT OF BEGINNING.

**APN: 077E-1593-008**

Exhibit B

**SECURED PROMISSORY NOTE**

\$400,0000

San Leandro, California

, 2017

**FOR VALUE RECEIVED**, Dan and Gina Dillman ("**Borrower**") promises to pay to the City of San Leandro, a public body, corporate and politic ("**Lender**"), in lawful money of the United States of America, the principal sum of four hundred thousand dollars (\$400,000), or so much thereof as may be advanced by Lender pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal in accordance with the terms and conditions described herein.

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to a Loan Agreement dated as of the date hereof by and between Borrower and Lender (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date thereof, executed by Borrower for the benefit of Lender and encumbering the property described therein. Lender shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, and in the Deed of Trust.

1. **INTEREST RATE; REPAYMENT.** Interest shall accrue on the outstanding principal balance of this Note at the rate of three percent (3%) simple interest per annum commencing upon the date of disbursement thereof. Interest shall be calculated on the basis of three hundred sixty five (365) days, and charged for the actual number of days elapsed.

2. **PAYMENT DATES; MATURITY DATE.** Commencing June 1, 2018 (the "**First Payment Date**"), and on the first (1st) day of each calendar quarter thereafter, Borrower shall make quarterly payments of interest. The entire indebtedness including any remaining interest and the principal, shall be due and paid in full upon the Maturity Date (defined below). The entire outstanding principal balance of this Note, together with any accrued interest and all other sums accrued hereunder shall be payable in full on the thirtieth (30) anniversary of the date of this Note (the "**Maturity Date**").

Payments shall be credited first to any unpaid late charges and other costs and fees then due, and then to accrued interest. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower.

3. DUE ON SALE OR DEFAULT. The entire unpaid principal balance and all sums accrued hereunder shall be immediately due and payable upon the Transfer (as defined in Section 1.4 of the Loan Agreement) absent Lender's consent, of all or any part of the Property or the Improvements, or any interest therein, or upon the occurrence of an Event of Default under the Loan Documents, subject to the expiration of any applicable cure period. Without limiting the generality of the foregoing, this Note shall not be assigned without Lender's prior written consent, which consent may be granted or denied in Lender's sole discretion.

4. PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

5. MANNER OF PAYMENT. All payments on this Note shall be made to Lender at 835 East 14<sup>th</sup> Street, San Leandro, CA 94577 or such other place as Lender shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Lender in writing.

6. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for fifteen (15) days after Lender notifies Borrower thereof in writing.

(b) Borrower fails to maintain insurance on the Property and the Improvements as required pursuant to the Loan Documents and Borrower fails to cure such default within ten (10) days.

(c) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Borrower (i) commences a voluntary case or proceeding in bankruptcy; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(d) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or



substantially all of Borrower's assets, (iii) orders the liquidation of Borrower; or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

(e) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of an execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(f) A default arises under any debt instrument secured by a mortgage or deed of trust on the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(g) Subject to Borrower's right to contest the following charges pursuant to the Loan Documents, and subject to existing charges, liens, or judgements for delinquent taxes, assessments, or monies owed by Borrowers which are disclosed in writing by Borrower to Lender and which Lender acknowledges in writing. if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or Improvements, and Borrower fails to cure such default within one hundred twenty (120) days of the date of delinquency but in all events upon the imposition of any such tax or other lien.

(h) Any representation or warranty contained in this Agreement or any application, financial statement, certificate or report furnished in connection with the loan or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

(i) An event of default shall have been declared under any other Loan Document subject to the applicable cure periods set forth in such documents.

(j) Borrower defaults in the performance of any term, provision, covenant, or agreement (other than an obligation enumerated in this Section 6) contained in this Notice or in any other Loan Document, and unless such document specifies a different cure period for such default, the default continues for fifteen (15) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

(k) If Borrower, without the express written consent of Lender, creates, takes, agrees to, suffers to exist, or enters into any mortgage, lien, charge, or encumbrance, including liens arising from judgements on the Property. This includes Workers' Compensation, unemployment, Internal Revenue Service, liens or mortgages secured by a second deed of trust upon the Property, state, local, mechanic, and any other liens of any type.

7. REMEDIES. Upon the occurrence of an Event of Default hereunder, Lender may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to Lender under this Note and the other Loan Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Lender including, without limitation, reasonable attorneys' fees, incurred in connection with Lender's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply immediately. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Lender from exercising any of its other rights or remedies.

9. MISCELLANEOUS.

9.1. WAIVER. The rights and remedies of Lender under this Note shall be cumulative and not alternative. No waiver by Lender of any right or remedy under this Note shall be effective unless in a writing signed by Lender. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Lender will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Lender arising out of this Note can be discharged by Lender, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Lender; (b) no waiver that may be given by Lender will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Lender to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand,

protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2. NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 7.1 of the Loan Agreement.

9.3. SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4. GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court having jurisdiction in which the Property is located (the "Property Jurisdiction"). Borrower agrees that any controversy arising under or in relation to the Note or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note and any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

9.5. PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Lender and its successors and assigns.

9.6. SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7. RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Lender under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make Lender the partner or joint venturer of Borrower.

9.8. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9.9. JOINT AND SEVERAL OBLIGATION. Because Borrower consists of two or more individuals, the obligations of such individuals hereunder shall be joint and several.

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

**BORROWER**

Dan Dillman

---

Gina Dillman

---

Exhibit C

**FORM OF DEED OF TRUST**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Space above this line for Recorder's use.

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”) is made as of \_\_\_\_\_, 2017 by Dan and Gina Dillman, a married couple under the laws of the State of California (“**Trustor**”) to the City of San Leandro, a charter city formed under the laws of the State of California, as trustee (“**Trustee**”), for the benefit of the City of San Leandro (“**Beneficiary**”).

**RECITALS**

A. Trustor owns fee simple title to the land located at 14808 E. 14th Street in San Leandro, California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”).

B. Beneficiary and Trustor have entered into a Loan Agreement dated as of the date hereof (the “**Loan Agreement**”) pursuant to which Beneficiary will provide a loan to Trustor in the amount of four hundred thousand Dollars (\$400,000) (the “**Loan**”) for the purpose of bridge financing for Trustor to pay off another indenture. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the “**Note**”) to evidence Trustor’s obligation to repay the Loan.

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (defined below) to secure repayment of the Note.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title

and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, “**Rents**”);

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding (“**Proceeds**”);

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor (“**Gross Revenues**”);

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, “**Plans**”); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, “**Financing**”).

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the “**Property.**”

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the “**Secured Obligations**”): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary’s interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended. The Note, the Loan Agreement, and this Deed of Trust are hereafter collectively referred to as the “**Loan Documents.**”

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys’ fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary’s right to the rents, royalties, issues, profits, revenues, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a “mortgagee in possession,” shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or



defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Deed of Trust creates a valid lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's office is specified in Section 10.2.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) no contracts, licenses, leases or commitments regarding the maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly

authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that other than what was disclosed in writing to Beneficiary and duly acknowledged by Beneficiary, there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the Loan Proceeds solely for purposes authorized by the Loan Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other Transfer (as defined in the Loan Agreement) occurs in violation of the Loan Documents, including but not limited without Beneficiary's written consent. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect

the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following two business days prior notice. The books, records, contracts, Leases, records, documents, and other instrumentssubject to examination and inspection as described herein shall be, to the fullest extent permitted by law, exempt from public disclosure.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

Trustor shall immediately discharge or cause to be discharged any lien on the Property (other than encumbrances approved by Beneficiary as of the date hereof in writing). Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, Trustor shall at Trustor's expense, maintain insurance policies in accordance with the requirements set forth in the Loan Documents. Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may reasonably require, including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required pursuant to the Loan Documents, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to the Loan Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.11 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the best knowledge of Trustor: (i) the Land is free and has always been free of Hazardous Materials (as defined below) and is not and has never been in violation of any Environmental Law (as defined below); (ii) there are no buried or partially buried storage tanks located on the Land; (iii) Trustor has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Land; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Land, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Land has never been used as a dump or landfill; and (vii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of a theater and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

- a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;
- b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and
- c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

**“Hazardous Materials”** means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

**“Environmental Law”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act

[California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within ten business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.13 Indemnification. Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants or event of default under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any



other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, insurance and/or condemnation proceeds may be used to repair and/or restore the Improvements.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

## 8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within fifteen (15) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer or Encumbrance occurs in violation of the Loan Agreement and Trustor fails to rescind such conveyance or otherwise cure such breach within the time period specified in paragraph j. below;

d. Trustor fails to maintain the insurance coverage required hereunder or otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the time specified in Section 7.10;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 10 days.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or substantially all of such Trustor's assets, (iii) orders the liquidation of Trustor, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within fifteen (15) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than thirty (30) days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to

collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a

written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the Loan Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time

prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

**Beneficiary:** City of San Leandro  
City Hall  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: City Manager

**Trustor:** Dan and Gina Dillman

**Trustee:** City of San Leandro  
City Hall, 835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: Finance Director

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive any provision of the Loan Documents imposing restrictions on transfer.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Alameda County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that may arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's City Manager or by any person who shall have been designated by Beneficiary's City Manager, without further approval by the City Council of Beneficiary. Beneficiary shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner. In any approval, consent, or other determination by Beneficiary required hereunder, Beneficiary shall act reasonably and in good faith.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

**SIGNATURES ON FOLLOWING PAGE.**



**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the date first written above.

**TRUSTOR:**

By: \_\_\_\_\_  
Gina Dillman

By: \_\_\_\_\_  
Dan Dillman

**SIGNATURES MUST BE NOTARIZED.**

Exhibit D

**LOAN AMORTIZATION SCHEDULE**

# Loan Amortization Schedule

Enter values	
Loan amount	\$ 400,000.00
Annual interest rate	3.00 %
Loan period in years	30
Number of payments per year	2
Start date of loan	12/1/2017
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 10,157.37
Scheduled number of payments	60
Actual number of payments	60
Total early payments	\$ -
Total interest	\$ 209,442.26

Borrower Name

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	6/1/2018	\$ 400,000.00	\$ 10,157.37	\$ -	\$ 10,157.37	\$ 4,157.37	\$ 6,000.00	\$ 395,842.63	\$ 6,000.00
2	12/1/2018	395,842.63	10,157.37	-	10,157.37	4,219.73	5,937.64	391,622.90	11,937.64
3	6/1/2019	391,622.90	10,157.37	-	10,157.37	4,283.03	5,874.34	387,339.87	17,811.98
4	12/1/2019	387,339.87	10,157.37	-	10,157.37	4,347.27	5,810.10	382,992.60	23,622.08
5	6/1/2020	382,992.60	10,157.37	-	10,157.37	4,412.48	5,744.89	378,580.12	29,366.97
6	12/1/2020	378,580.12	10,157.37	-	10,157.37	4,478.67	5,678.70	374,101.45	35,045.67
7	6/1/2021	374,101.45	10,157.37	-	10,157.37	4,545.85	5,611.52	369,555.60	40,657.19
8	12/1/2021	369,555.60	10,157.37	-	10,157.37	4,614.04	5,543.33	364,941.56	46,200.53
9	6/1/2022	364,941.56	10,157.37	-	10,157.37	4,683.25	5,474.12	360,258.31	51,674.65
10	12/1/2022	360,258.31	10,157.37	-	10,157.37	4,753.50	5,403.87	355,504.82	57,078.53
11	6/1/2023	355,504.82	10,157.37	-	10,157.37	4,824.80	5,332.57	350,680.02	62,411.10
12	12/1/2023	350,680.02	10,157.37	-	10,157.37	4,897.17	5,260.20	345,782.85	67,671.30
13	6/1/2024	345,782.85	10,157.37	-	10,157.37	4,970.63	5,186.74	340,812.22	72,858.04
14	12/1/2024	340,812.22	10,157.37	-	10,157.37	5,045.19	5,112.18	335,767.03	77,970.22
15	6/1/2025	335,767.03	10,157.37	-	10,157.37	5,120.87	5,036.51	330,646.16	83,006.73
16	12/1/2025	330,646.16	10,157.37	-	10,157.37	5,197.68	4,959.69	325,448.49	87,966.42
17	6/1/2026	325,448.49	10,157.37	-	10,157.37	5,275.64	4,881.73	320,172.84	92,848.15
18	12/1/2026	320,172.84	10,157.37	-	10,157.37	5,354.78	4,802.59	314,818.06	97,650.74
19	6/1/2027	314,818.06	10,157.37	-	10,157.37	5,435.10	4,722.27	309,382.96	102,373.01
20	12/1/2027	309,382.96	10,157.37	-	10,157.37	5,516.63	4,640.74	303,866.34	107,013.76
21	6/1/2028	303,866.34	10,157.37	-	10,157.37	5,599.38	4,558.00	298,266.96	111,571.75
22	12/1/2028	298,266.96	10,157.37	-	10,157.37	5,683.37	4,474.00	292,583.60	116,045.76
23	6/1/2029	292,583.60	10,157.37	-	10,157.37	5,768.62	4,388.75	286,814.98	120,434.51
24	12/1/2029	286,814.98	10,157.37	-	10,157.37	5,855.15	4,302.22	280,959.83	124,736.74
25	6/1/2030	280,959.83	10,157.37	-	10,157.37	5,942.97	4,214.40	275,016.86	128,951.13
26	12/1/2030	275,016.86	10,157.37	-	10,157.37	6,032.12	4,125.25	268,984.74	133,076.39

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
27	6/1/2031	268,984.74	10,157.37	-	10,157.37	6,122.60	4,034.77	262,862.14	137,111.16
28	12/1/2031	262,862.14	10,157.37	-	10,157.37	6,214.44	3,942.93	256,647.70	141,054.09
29	6/1/2032	256,647.70	10,157.37	-	10,157.37	6,307.66	3,849.72	250,340.05	144,903.80
30	12/1/2032	250,340.05	10,157.37	-	10,157.37	6,402.27	3,755.10	243,937.78	148,658.90
31	6/1/2033	243,937.78	10,157.37	-	10,157.37	6,498.30	3,659.07	237,439.47	152,317.97
32	12/1/2033	237,439.47	10,157.37	-	10,157.37	6,595.78	3,561.59	230,843.69	155,879.56
33	6/1/2034	230,843.69	10,157.37	-	10,157.37	6,694.72	3,462.66	224,148.98	159,342.22
34	12/1/2034	224,148.98	10,157.37	-	10,157.37	6,795.14	3,362.23	217,353.84	162,704.45
35	6/1/2035	217,353.84	10,157.37	-	10,157.37	6,897.06	3,260.31	210,456.78	165,964.76
36	12/1/2035	210,456.78	10,157.37	-	10,157.37	7,000.52	3,156.85	203,456.26	169,121.61
37	6/1/2036	203,456.26	10,157.37	-	10,157.37	7,105.53	3,051.84	196,350.73	172,173.46
38	12/1/2036	196,350.73	10,157.37	-	10,157.37	7,212.11	2,945.26	189,138.62	175,118.72
39	6/1/2037	189,138.62	10,157.37	-	10,157.37	7,320.29	2,837.08	181,818.33	177,955.80
40	12/1/2037	181,818.33	10,157.37	-	10,157.37	7,430.10	2,727.27	174,388.23	180,683.07
41	6/1/2038	174,388.23	10,157.37	-	10,157.37	7,541.55	2,615.82	166,846.69	183,298.90
42	12/1/2038	166,846.69	10,157.37	-	10,157.37	7,654.67	2,502.70	159,192.02	185,801.60
43	6/1/2039	159,192.02	10,157.37	-	10,157.37	7,769.49	2,387.88	151,422.52	188,189.48
44	12/1/2039	151,422.52	10,157.37	-	10,157.37	7,886.03	2,271.34	143,536.49	190,460.81
45	6/1/2040	143,536.49	10,157.37	-	10,157.37	8,004.32	2,153.05	135,532.17	192,613.86
46	12/1/2040	135,532.17	10,157.37	-	10,157.37	8,124.39	2,032.98	127,407.78	194,646.84
47	6/1/2041	127,407.78	10,157.37	-	10,157.37	8,246.25	1,911.12	119,161.52	196,557.96
48	12/1/2041	119,161.52	10,157.37	-	10,157.37	8,369.95	1,787.42	110,791.58	198,345.38
49	6/1/2042	110,791.58	10,157.37	-	10,157.37	8,495.50	1,661.87	102,296.08	200,007.26
50	12/1/2042	102,296.08	10,157.37	-	10,157.37	8,622.93	1,534.44	93,673.15	201,541.70
51	6/1/2043	93,673.15	10,157.37	-	10,157.37	8,752.27	1,405.10	84,920.88	202,946.80
52	12/1/2043	84,920.88	10,157.37	-	10,157.37	8,883.56	1,273.81	76,037.32	204,220.61
53	6/1/2044	76,037.32	10,157.37	-	10,157.37	9,016.81	1,140.56	67,020.51	205,361.17
54	12/1/2044	67,020.51	10,157.37	-	10,157.37	9,152.06	1,005.31	57,868.44	206,366.48
55	6/1/2045	57,868.44	10,157.37	-	10,157.37	9,289.34	868.03	48,579.10	207,234.50
56	12/1/2045	48,579.10	10,157.37	-	10,157.37	9,428.68	728.69	39,150.41	207,963.19
57	6/1/2046	39,150.41	10,157.37	-	10,157.37	9,570.11	587.26	29,580.30	208,550.45
58	12/1/2046	29,580.30	10,157.37	-	10,157.37	9,713.67	443.70	19,866.63	208,994.15
59	6/1/2047	19,866.63	10,157.37	-	10,157.37	9,859.37	298.00	10,007.26	209,292.15
60	12/1/2047	10,007.26	10,157.37	-	10,007.26	9,857.15	150.11	0.00	209,442.26

## Exhibit E

### **INSURANCE REQUIREMENTS**

Unless Lender agrees otherwise in writing, Borrower shall, at Borrower's sole cost and expense, throughout the term of the Note dated as of the date hereof and executed by Borrower for the benefit of Lender (the "**Note**") shall keep and maintain the following policies of insurance. Capitalized terms used without definition in this Exhibit B shall have the meaning ascribed to such terms in the Loan Agreement of which this Exhibit is a part.

A. Property Insurance. Insurance for the risks of direct physical loss, naming Lender as loss payee as its interests may appear, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all Improvements, all fixtures and equipment located on or in, or constituting a part of, the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Borrower from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Lender) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement," an "increased cost of construction endorsement," and an endorsement covering underground work, if applicable to the Project.

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property or the Improvements. Commencing upon the Effective Date of the Loan Agreement and at all times prior to repayment of all sums payable under the Note, the limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Lender. If an aggregate limit is used, either the general aggregate limit shall apply separately to the Property or the general aggregate limit shall be twice the required occurrence limit.

The insurance shall also include:

- (i) coverage against liability for bodily injury or property damage arising out of the use, by or on behalf of Borrower, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;

- (ii) premises and completed operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;
- (iii) broad form property damage liability;
- (iv) additional insured and primary insured endorsements protecting Lender and their respective elected and appointed officials, officers, employees and agents; and
- (v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Borrower's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project, the Improvements or the Property. Borrower shall require that any general construction contract entered into by Borrower with regard to the Project include a contractual undertaking by the general contractor to provide worker's compensation insurance for its employees engaged in construction of the Project in an amount in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance, naming Lender as loss payee in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A/VII or better in Best's Insurance Guide or, if Best's Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the closing of the Loan, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit, Borrower shall deliver to Lender certificates evidencing the insurance required to be carried by Borrower under this Exhibit. If requested by Lender, Borrower shall deliver within fifteen (15) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided herein shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Lender, Borrower or any subtenant for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of

recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Borrower which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Lender and its elected and appointed officials, officers, employees and agents shall be named as additional insured under the policies of liability insurance and as loss payee under the property damage and course of construction insurance required to be maintained by Borrower hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Lender.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Lender prior to commencement of construction.

(f) Each policy shall contain an endorsement that proves that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Lender may carry.

(h) Each policy shall expressly provide that Lender shall not be required to give notice of accidents or claims and that Lender shall not have liability for premiums.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Lender. At the option of the Lender, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Lender, its officers, officials, employees, and volunteers; or the Borrower shall procure a bond to guarantee payment of losses and related investigations, claim administration and defense expenses.

G. Blanket Policies. Any insurance required pursuant to this Exhibit may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Improvements shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Exhibit.

H. Compliance with Policy Requirements. Borrower shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Borrower shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

I. Additional Insurance. Borrower shall have the right to carry such additional insurance as Borrower may desire from time to time or as may be required by any mortgagee with a security interest in the Property.

J. Modification to Requirements. The risk manager of the Lender may approve a variation in these insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the Lender's interests are otherwise fully protected.

2852570.1