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WEBCOR CONSTRUCTION, LP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, DISTRICT

WEBCOR CONSTRUCTION, LP, a California limited partnership, Plaintiff, vs. LENDLEASE (US) CONSTRUCTION, INC., a Florida corporation; OCEANWIDE PLAZA, LLC, a Delaware limited liability company; L.A. DOWNTOWN INVESTMENT, LP, a California limited partnership; CHICAGO TITLE INSURANCE COMPANY, a Florida corporation; MASONRY CONCEPTS, INC., a California corporation; TWINING, INC., a California corporation; PHL, INC. doing business as VNSM, a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 19STCV03357 *Unlimited Civil Case* *(Amount in Controversy Exceeds $25,000)* **FIRST AMENDED COMPLAINT FOR:** **1. BREACH OF CONTRACT;** **2. FORECLOSURE OF MECHANIC'S LIEN;** **3. VIOLATION OF PROMPT PAYMENT STATUTORY DUTIES;** **4. QUANTUM MERUIT; AND** **5. DECLARATORY RELIEF.** Date Action Filed: January 31, 2019 Trial Date:

Plaintiff Webcor Construction, LP ("Webcor") alleges as follows:

PARTIES

1. Webcor is, and at all times mentioned herein was, a limited partnership duly operating under the laws of the State of California. At all times required, Webcor has been duly licensed by the California State Contractor's License Board to perform the work involved in this Complaint.

2. Webcor is informed and believes, and based thereon alleges, that Lendlease (US) Construction, Inc. ("Lendlease") is, and at all times herein mentioned was, a Florida corporation authorized to do, and doing business in the State of California.

3. Webcor is informed and believes, and based thereon alleges, that Oceanwide Plaza, LLC ("Oceanwide"), formerly known as Tohigh Construction Investment, LLC, is, and at all times herein mentioned was, a Delaware limited liability company authorized to do, and doing business in the State of California.

4. Webcor is informed and believes, and based thereon alleges, that L.A. Downtown Investment, LP ("Downtown Investment") is, and at all times herein mentioned was, a limited partnership operating under the laws of the State of California.

5. Webcor is informed and believes, and based thereon alleges, that Chicago Title Insurance Company ("Chicago Title") is, and at all times herein mentioned was, a Florida corporation authorized to do, and doing business in the State of California.

6. Webcor is informed and believes, and based thereon alleges, that Masonry Concepts, Inc. ("Masonry Concepts") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California.

7. Webcor is informed and believes, and based thereon alleges, that Twining, Inc. ("Twining") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California.

8. Webcor is informed and believes, and based thereon alleges, that PHL, Inc. doing business as VNSM ("PHL") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California.

9. Webcor does not know the true names and capacities of Defendants Does 1 through 100, inclusive, and on that basis designates said Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. When the true names and capacities of Defendants Does 1 through 100, inclusive, or any of them become known, Webcor will amend this Complaint to state their true names and capacities. Webcor is informed and believes, and based thereon alleges, that each of the Defendants designated here as Does 1 through 100, inclusive, is in some manner

responsible, liable or indebted to Webcor in connection with the events or transactions referred to in this Complaint and/or claims some interest in the Property by way of lien, encumbrance or otherwise.

10. Webcor is informed and believes, and based thereon alleges, that each of the Defendants, including Does 1 through 100, inclusive, was and is the agent and/or representative of the remaining Defendants, and that each of the Defendants in doing the things alleged herein, acted and continues to act with the knowledge and consent of the remaining Defendants.

VENUE

11. Pursuant to Code of Civil Procedure section 392, venue is proper for this action in Los Angeles County because the real property that is the subject of this action is located in Los Angeles County.

THE PROJECT

12. Webcor is informed and believes, and based thereon alleges, that in or about 2014, Oceanwide and Lendlease entered into an agreement (the "Prime Contract") whereby Lendlease would perform preconstruction work to start construction on a new project involving a large, mixed-use development located on an approximately 200,000 square foot full city block, located at 1101 S. Flower Street, Los Angeles, California 90015 (APN 5138-015-045) (the "Property"), to be known as Oceanwide Plaza (the "Project"). The Project consists of three (3) towers, including a hotel, condominiums, restaurants, retail space, and a communal recreation area.

13. Webcor is informed and believes, and based thereon alleges, that shortly thereafter, in 2014 and continuing into 2015, Lendlease, under contract with Oceanwide, began demolition of existing site improvements, excavation, shoring and grading of the Project site for Oceanwide in preparation for the construction of new buildings and related facilities.

14. Webcor is informed and believes, and based thereon alleges, that thereafter, Lendlease continued to construct the new buildings and related improvements of the Project for Oceanwide under an additional prime contract covering the same work of improvement.

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THE DEED OF TRUST

15. Webcor is informed and believes, and based thereon alleges, that on or about July 20, 2015, months after construction had commenced at the Property, Downtown Investment caused to be recorded a Deed of Trust (the "Deed of Trust") against the Property (Document No. 20150874467) in the Official Records of Los Angeles County. The Deed of Trust names Chicago Title as the trustee and Downtown Investment as the beneficiary, and purports to secure an original indebtedness of Three Hundred Twenty-Five Million Dollars ($325,000,000.00). A true and correct copy of the Deed of Trust is attached hereto and incorporated herein as **Exhibit "A."**

16. The validity of, and circumstances surrounding, said Deed of Trust and the alleged underlying loan are suspicious for a number of reasons, in addition to the fact that it was recorded significantly after work on the Project had begun. For example, Webcor is informed and believes, and based thereon alleges, that the amount secured by the Deed of Trust is vastly overstated: while the face value of the Deed of Trust is Three Hundred Twenty Five Million Dollars ($325,000,000.00), Webcor is informed and believes, and based thereon alleges, that the actual amount loaned to Oceanwide was no more than One Hundred Thirty Eight Million Dollars ($138,000,000.00). Further, the Deed of Trust names, as beneficiary, Downtown Investment – an entity that appears to be closely related to, and affiliated with, the purported "debtor," Oceanwide. Indeed, the Official Records of the California Secretary of State indicate that the entity address for Downtown Investment is the same as that of the Property.

17. Moreover, Webcor is informed and believes, and based thereon alleges, that there is substantial overlap in the management of Downtown Investment and purported "debtor," Oceanwide. Webcor is informed and believes, and based thereon alleges, that Edward Chen ("Chen") is an Executive Officer of Downtown Investment and the President of Homewin Management LLC, general partner of Downtown Investment. On September 20, 2017, the Securities and Exchange Commission (the "SEC") commenced an action against Chen in the United States District Court for the Central District of California (Case No. 2:17-cv-06929-PA-JEM; hereinafter, the "SEC Case"). The SEC alleged that Chen and his wife had misappropriated millions of dollars of investor money, namely by selling securities under the federal EB-5 immigration program to

supposedly invest in California development projects, but instead diverted investor money to Chen's various corporate entities and withdrew funds in cash and cashier's checks for his own use.

18. On November 19, 2018, Chen consented to entry of a Final Judgment against him in the SEC Case including findings that he and his wife had defrauded investors under their EB-5 investment scheme and ordering Chen and his wife to repay over Twenty-Four Million Dollars ($24,000,000.00) in damages for said fraud. The Final Judgment also ordered that Chen is permanently barred from the offer or sale of any securities under the EB-5 visa program.

19. Webcor is informed and believes, and based thereon alleges, that, like Chen's other misrepresented development projects referenced in the SEC Case, the Oceanwide Project was funded by EB-5 visa offerings under one of Chen's investment schemes.

20. Webcor is informed and believes, and based thereon alleges, that Kwok Yue Cheng ("Cheng"), is also an Executive Officer of Downtown Investment and the Vice President of Homewin Management LLC, general partner of Downtown Investment. Webcor is informed and believes, and based thereon alleges, that during the same period that he was an officer of Downtown Investment with Chen, Cheng was also the Chief Executive Officer, Chief Financial Officer, and Secretary of a related entity, 1101 South Flower Street Associates, Inc. Webcor is informed and believes and based thereon alleges, that in 2015, 1101 South Flower Street Associates, Inc. merged into Oceanwide Real Estate Group (USA) Corp. ("Oceanwide Real Estate Group"), a Delaware corporation authorized to do, and doing business in the State of California.

21. Webcor is informed and believes, and based thereon alleges, that Oceanwide Real Estate Group is the managing member of Oceanwide. Oceanwide and Oceanwide Real Estate Group also share a Chief Executive Officer, agent for service of process, and entity address, as listed in the Official Records of the California Secretary of State.

22. Based on the foregoing, Webcor is informed and believes, and based thereon alleges, that Downtown Investment and Oceanwide are related and affiliated entities, and Downtown Investment was not acting as a third-party lender in an arm's length transaction when it executed the Deed of Trust.

WEBCOR'S WORK

23. On or about December 18, 2015, Webcor and Lendlease entered into a written Subcontract (Subcontract No. 0300.000) (the "Subcontract"), by which Webcor agreed, in consideration for certain agreed upon compensation, to furnish construction labor, materials, equipment, and services in connection with the installation of concrete and reinforcing work on the Project. A true and correct copy of the Subcontract is attached hereto and incorporated herein as **Exhibit "B"**, exclusive of exhibits, written change orders, and other components of the Subcontract documents.

24. Under the original Subcontract, Lendlease agreed to pay Webcor One Hundred, Twenty-Two Million Dollars ($122,000,000.00), subject to additions and deductions for changes in the work.

25. Subsequent to entering into the Subcontract, Webcor and Lendlease entered into Change Orders amending the Subcontract pursuant to which, *inter alia*, Webcor's scope of work was amended and the Subcontract price was increased.

26. Pursuant to the Subcontract and Change Orders, Webcor thereafter provided labor, services, equipment, and/or material for Lendlease and Does 1 through 10, inclusive, in connection with the Project.

27. During the course of the Project, Webcor encountered extensive delays to the performance of its work, labor inefficiencies, and disruption of productivity, for which Webcor was not responsible, and incurred significant additional costs as a result thereof. The problems and delays on the Project immediately impacted Webcor from the outset of planning its work, and continued throughout Webcor's work on the Project.

28. One of the key drivers of the delays, disruptions, and inefficiencies was the late and incomplete Project design. The late and deficient design continually caused Webcor to expend its time and resources to fix work conditions, wait for the resolution of design issues and conflicts, incorporate design changes into its planned activities, perform added and changed work, and work under disruptive conditions, all of which resulted in significant impacts to Webcor's productivity.

29. Even after Webcor commenced its work, the Project was still undergoing significant

and pervasive design changes for all three (3) towers. In or around May of 2016, Lendlease and Oceanwide recognized that the design prepared by others for Oceanwide was incomplete and that due to the continuing design changes, it was not practical to continue to progress the work on the Project. As a result, Lendlease issued stop work notices for each tower to allow time for the design of the lower levels of each tower to be progressed. These stoppages of work to accommodate the Project's re-designs ultimately delayed Webcor's work and disrupted its productivity.

30. Even after the work stoppages were lifted and Webcor was released to recommence its work, Oceanwide's designs continued to be revised for reasons beyond Webcor's control. Webcor had to incorporate the design changes into its work and was directed to continue construction while concurrently submitting new submittals for the revised designs. As a result, Webcor could only proceed with constructing to the best of its abilities and experience as there was no approved set of drawings or plans against which it could build. Thus, Webcor was required to install work without an approved Project design and without knowledge that its work would be ultimately approved, causing significant inefficiencies and delays.

31. Webcor's work was further delayed and impacted as Oceanwide would make field modifications or require adjustments to Webcor's work after it had been installed.

32. Webcor is informed and believes, and based thereon alleges, that in or about November of 2018, Oceanwide failed to make certain progress payments due to Lendlease under the Prime Contract. As a direct and proximate result, on or about January 18, 2019, Lendlease issued a notice of suspension of work on the Project to its subcontractors, including Webcor. This caused further delays to the work and further delays in payment to Webcor by Lendlease.

33. In or around March of 2019, Webcor submitted a Change Order Request to Lendlease for final additional costs associated with design changes and delays incurred since May 4, 2018. As of March 2019, Webcor's final additional costs associated with design changes and delays incurred since May 4, 2018 remain unpaid.

34. The above and other substantial impacts caused not only substantial delays to Webcor's work, but also caused Webcor to incur significant lost labor productivity, added supervision, and excessive overtime costs.

FIRST CAUSE OF ACTION

[Breach Of Contract Against Lendlease And Does 1 through 10, Inclusive]

35. Webcor hereby incorporates by reference the preceding paragraphs of this Complaint, as though fully set forth herein.

36. Webcor has performed or satisfied all conditions and covenants required of it under the Subcontract, except those for which it has been prevented from performing or satisfying, or from which it has been excused.

37. Lendlease and Does 1 through 10, inclusive, and each of them, have breached the terms, covenants, promises, obligations, provisions, and warranties of the Subcontract by various acts and omissions including, without limitation, the following:

(a) Failing and refusing to make payments for all completed work, changes, alterations, extra work, labor inefficiencies, delays, and contract earnings, including, but not limited to, amounts claimed owed by Webcor's subcontractors (including Alamillo Rebar, Inc.), as required by the Subcontract, and to release payments in accordance therewith;

(b) Failing and refusing to pay Webcor undisputed amounts owed under the Subcontract;

(c) Failing and refusing to make retention payments to Webcor when due under the Subcontract;

(d) Failing and refusing to issue all appropriate Change Orders and make payment for the same, as well as the delay and labor inefficiency damage suffered by Webcor;

(e) Altering the scope of work, means and methods of construction under the Subcontract without fully compensating Webcor for the added costs caused by such alterations;

(f) Significantly altering and delaying the Project's designs and the time for Webcor's performance of the Subcontract without compensating Webcor for the additional costs associated with such alterations and delays;

(g) Significantly disrupting, interfering with, and impacting Webcor's labor productivity on the Project, including several stoppages of work and pervasive re-designs, without compensating Webcor for the additional costs associated with such disruptions, interferences, and

impacts;

(h) Causing Webcor to modify or adjust its work after it had been installed to comply with Oceanwide's evolving design modifications;

(i) Causing Webcor to cure discrepancies in the work performed by other parties prior to Webcor's mobilization;

(j) Causing Webcor to incur added costs to supervise and manage its work on the Project; and

(k) Causing Webcor to incur added costs for its overtime work without reimbursement.

38. Webcor gave timely notice to Lendlease of the aforementioned numerous impacts to its work, and submitted a Request for Equitable Adjustment and multiple Change Order requests for the same, and invoices for payment of Subcontract retention and other balances owed, but yet a substantial sum remains unpaid to Webcor.

39. Implied in the Subcontract is a covenant of good faith and fair dealing obligating the parties to act towards each other in good faith, to deal fairly with one another, to make all material disclosures, and not to do anything that might deprive the other of the expectations and benefits of the Subcontract, and obligating each party to do everything that the Subcontract presupposes to accomplish their purposes. For the reasons stated herein, Lendlease and Does 1 through 10, inclusive, and each of them, have breached the implied covenant of good faith and fair dealing owed to Webcor.

40. As a direct and proximate result of the foregoing, Webcor has suffered damages including, but not limited to, unpaid Subcontract balance, retention, additional work costs, time delays, lost productivity, increased administrative costs, escalated and extended labor, supervision, material and equipment costs, unpaid overtime premiums, and other damages in an amount in excess of the jurisdiction of this court, and to be determined at trial, but exceeding Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00).

41. The Subcontract provides that attorneys' fees and costs incurred to enforce the Subcontract are recoverable, and Webcor has incurred, and continues to incur, fees and costs.

WHEREFORE, Webcor prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

[Foreclosure of Mechanic's Lien Against Lendlease, Oceanwide, Downtown Investment, Chicago Title, Masonry Concepts, Twining, PHL, and Does 1 – 100, Inclusive]

42. Webcor hereby incorporates by reference the preceding paragraphs of this Complaint, as though fully set forth herein.

43. Webcor has served all necessary parties with a written preliminary notice (the "Preliminary Notice") in compliance with the requirements of the applicable statutory sections including, but not limited to, California Civil Code sections 8200, *et seq*. A true and correct copy of Webcor's Preliminary Notice is attached hereto and incorporated herein as **Exhibit "C."**

44. On or about March 26, 2019, and after it had ceased providing labor and materials in connection with the Project, Webcor caused to be recorded a verified Mechanic's Lien (the "Mechanic's Lien") against the Property in the Official Records of Los Angeles County. Webcor's demand was for the sum of Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00), with interest thereon.

45. The labor, equipment, and materials furnished by Webcor were actually used and consumed in the Project. All of the work performed by Webcor benefited Lendlease, Oceanwide, and the other defendants, as claimed owners of interests in the Property.

46. The reasonable value of the work which is subject to the Mechanic's Lien, including labor, equipment, and materials furnished by Webcor for the Project, at the request of and for the benefit of Defendants is such that, after deducting all credits and offsets, there continues to be amounts due and owing to Webcor for work furnished by it on the Project, in an amount of at least Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00), plus interest thereon at the maximum rate provided by law.

47. Webcor is informed and believes, and based thereon alleges, that Lendlease, Oceanwide, Downtown Investment, Chicago Title, Masonry Concepts, Twining, PHL, and Does 1 through 100, inclusive, have, or claim to have, some estate, liens, or right to the interest upon the Property or some part thereof, which claims or liens are subject, subsequent, and subordinate to the

Mechanic's Lien.

48. Webcor's filing of this action is in compliance with the provisions of California Civil Code section 8460.

49. Webcor has paid charges and expenses for recording the Mechanic's Lien which have not been repaid to Webcor.

50. The whole Property upon which the Project is located is necessary and required for the convenient use and occupation of the Property.

WHEREFORE, Webcor prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

[Violation Of Prompt Payment Statutory Duties Against Lendlease And Does 1 – 10, Inclusive]

51. Webcor hereby incorporates by reference the preceding paragraphs of this Complaint, as though fully set forth herein.

52. California Business and Professions Code section 7108.5 mandates that seven (7) days after the general contractor receives the progress payment from the owner, it must remit to the subcontractor its portion of the progress payment. Likewise, California Civil Code sections 8812 and 8814 impose prompt payment penalties for the failure to timely release retention payments. If a general contractor, such as Lendlease, fails to make payment to a subcontractor, such as Webcor, within the statutorily prescribed periods, a two-percent (2%) per month penalty is assessed on the amount wrongfully withheld, in addition to the award of costs and reasonable attorneys' fees to the prevailing party. (Cal. Civ. Code § 8818).

53. Notwithstanding the foregoing, Lendlease and Does 1 through 10, inclusive, have failed to issue payment of the amounts wrongfully withheld.

54. As a direct and proximate result of the foregoing, Webcor is entitled to a two-percent (2%) per month penalty since the date on which the Subcontract payments were due to Webcor, assessed on the amounts wrongfully withheld, in an amount to be determined at trial, in addition to its reasonable attorneys' fees incurred in the prosecution of this action.

WHEREFORE, Webcor prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

[Quantum Meruit Against Lendlease, Oceanwide, and Does 1 – 100, Inclusive]

55. Webcor hereby incorporates by reference the preceding paragraphs of this Complaint, as though fully set forth herein.

56. Within two (2) years prior to the filing of this action, Webcor sold and delivered valuable goods and rendered valuable services associated with the Project to and for the benefit of Lendlease, Oceanwide and Does 1 through 100, inclusive, and each of them. Lendlease, Oceanwide and Does 1 through 100, inclusive, and each of them, knew that those services were being provided and promised and are obligated to pay Webcor their reasonable value.

57. Despite demand by Webcor, Lendlease, Oceanwide and Does 1 through 100, inclusive, and each of them, have not paid to Webcor said sum or any part thereof, and there is now due, owing and unpaid from said defendants, and each of them, a sum in excess of the jurisdiction of this court, and to be determined at trial, but believed to exceed Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00).

WHEREFORE, Webcor prays for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

[Declaratory Relief Against Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, Inclusive]

58. Webcor hereby incorporates by reference the preceding paragraphs of this Complaint, as though fully set forth herein.

59. An actual controversy has arisen and now exists between Webcor and Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive, and each of them, concerning their respective rights and obligations vis-a-vis Webcor's Mechanic's Lien and the Deed of Trust.

60. Specifically, Webcor alleges that the Deed of Trust is subject, subsequent, and subordinate to Webcor's Mechanic's Lien as commencement of the work of improvement for the Project predates recordation of the Deed of Trust. Webcor is informed and believes, and based thereon alleges, that Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive,

and each of them, deny these contentions, and assert that the Deed of Trust is superior to Webcor's Mechanic's Lien.

61. Further, Webcor alleges that the face value of the Deed of Trust is vastly overstated, and the amount secured by the Deed of Trust is, in reality, no more than One Hundred Thirty-Eight Million Dollars ($138,000,000.00). Webcor is informed and believes, and based thereon alleges, that Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive, and each of them, deny these contentions.

62. Moreover, Webcor alleges that the value of its Mechanic's Lien is an amount of at least Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00), plus interest thereon at the maximum rate provided by law. Webcor is informed and believes, and based thereon alleges, that Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive, and each of them, deny these contentions.

63. Additionally, Webcor alleges that the Deed of Trust is invalid, illegal, and unenforceable on the basis of fraud and/or constructive fraud. Webcor is informed and believes, and based thereon alleges, that Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive, and each of them, deny these contentions.

64. Webcor desires a judicial determination of the respective rights and duties of Webcor and Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, inclusive, and each of them, with respect to (1) the relative priority of the Deed of Trust and Webcor's Mechanic's Lien; (2) the amount secured by the Deed of Trust, (3) the value of Webcor's Mechanic's Lien, and (4) the validity and enforceability of the Deed of Trust. In particular, Webcor desires a judicial determination that (1) the Deed of Trust is subject, subsequent, and subordinate to Webcor's Mechanic's Lien; (2) the Deed of Trust is overstated and secures an amount no more than One Hundred Thirty-Eight Million Dollars ($138,000,000.00); (3) the value of Webcor's Mechanic's Lien is an amount of at least Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00), plus interest thereon at the maximum rate provided by law; and (4) the Deed of Trust is invalid, illegal, and unenforceable.

65. The judicial determination of the parties' respective rights and obligations is

necessary and appropriate at this time in order that Webcor may ascertain its rights with respect to the costs and liabilities claimed herein.

WHEREFORE, Webcor prays for relief as hereinafter set forth.

PRAYER FOR RELIEF ON ALL CAUSES OF ACTION

WHEREFORE, Webcor prays for judgment against Lendlease, Oceanwide, Downtown Investment, Chicago Title, Masonry Concepts, Twining, PHL, and Does 1 through 100, and each of them, as follows:

On the First Cause of Action (Breach of Contract against Lendlease and Does 1 – 10, inclusive)

1. For damages in an amount to conform to proof at the time of trial, but in an amount in excess of Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00);

2. For interest at the legal rate; and

3. For reasonable attorneys' fees.

On the Second Cause of Action (Foreclosure of Mechanic's Lien Against Lendlease, Oceanwide, Downtown Investment, Chicago Title, Masonry Concepts, Twining, PHL, Does 1 – 100, Inclusive)

1. That the Court determine the amount to be due and owing to Webcor on the Mechanic's Lien, and declare that the rights, claims, ownership, and title of Defendants in the above-described Property are invalid or otherwise subsequent and subject to the Mechanic's Lien;

2. That the Court declare that the Mechanic's Lien be foreclosed, and the usual judgment be made for the sale of the Property therein according to law by a commissioner to be appointed by the Court; that the proceeds of the sale be applied in payment of the amounts found to be due and owing to Webcor; that all persons making claims, subsequent to the Mechanic's Lien, whether as lien claimants, judgment creditors, purchasers, encumbrances, or otherwise, be barred and foreclosed from all rights, claims, interest, or equity of redemption in the Property every part of the Property when any time of redemption has passed; and that Webcor may become a purchaser at such sale;

3. That the Court declare that if there is a deficiency of proceeds to satisfy the amounts due Webcor, judgment for deficiency shall be entered against Defendants following proceedings

prescribed by law; and

4. For reasonable costs, as determined by the Court.

On the Third Cause of Action (Violation of Prompt Payment Statutory Duties against Lendlease and Does 1 – 10, inclusive)

1. For damages in an amount to conform to proof at the time of trial;

2. For interest at the legal rate and penalties allowed by law; and

3. For reasonable attorneys' fees.

On the Fourth Cause of Action (Quantum Meruit against Lendlease, Oceanwide, Does 1 – 100, inclusive)

1. For damages in an amount to conform to proof at the time of trial, but in an amount in excess of Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00);

2. For interest at the legal rate; and

3. For reasonable costs as determined by the Court.

On the Fifth Cause of Action (Declaratory Relief Against Oceanwide, Downtown Investment, Chicago Title, and Does 1 – 100, Inclusive)

1. For a judicial determination adjudicating the parties' respective rights and obligations vis-a-vis Webcor's Mechanic's Lien and the Deed of Trust; and

2. For an order of the Court declaring that (1) the Deed of Trust is subject, subsequent, and subordinate to Webcor's Mechanic's Lien; (2) the Deed of Trust is overstated and secures an amount no more than One Hundred Thirty Eight Million Dollars ($138,000,000.00); (3) the value of Webcor's Mechanic's Lien is an amount of at least Sixty Million Two Hundred Ninety-Three Thousand One Hundred and Eighty-Six Dollars ($60,293,186.00), plus interest thereon at the maximum rate provided by law; and (4) the Deed of Trust is invalid, illegal, and unenforceable.

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On All Causes of Action

1. For costs and fees of suit herein;

2. For such other and further relief as the Court deems just and proper.

Dated: March 26, 2019

RUTAN & TUCKER, LLP

By: _____

William T. Eliopoulos
Philip J. Blanchard
Hannah S. Goodwin
Attorneys for Plaintiff
WEBCOR CONSTRUCTION, LP

EXHIBIT A

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20150874467

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California

07/20/15 AT 08:00AM

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TAXES:	0.00
OTHER:	0.00
PAID:	196.00

LEADSHEET

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SEQ:
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DAR - Title Company (Hard Copy)

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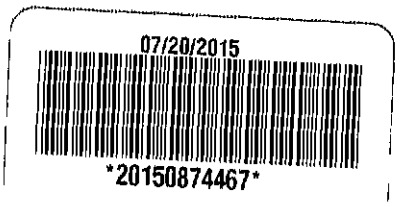
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

L.A. Downtown Investment LP
C/O Homewin Management, LLC
7000 E. Slauson Avenue
Commerce, California 90040



THIS IS A CONSTRUCTION TRUST DEED

(Space above this line for Recorder's use)

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

THIS DEED OF TRUST, FIXTURE FILING, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT (the "Deed of Trust"), dated **May 28, 2015**, is executed by **Oceanwide Plaza LLC, a Delaware limited liability company** ("Borrower"), **formerly known as Tohigh Construction Investment, LLC, a Delaware limited liability company**, whose address is **865 South Figueroa Street, Suite 3150, Los Angeles, California 90017**, in favor of Chicago Title Insurance Company ("Trustee"), whose address is 725 S. Figueroa Street, Suite 200, Los Angeles, California 90017, for the benefit of **L.A. Downtown Investment LP, a California limited partnership** ("Lender"), as beneficiary, whose principal office is located at **7000 E. Slauson Avenue, Commerce, California 90040.**

BORROWER IRREVOCABLY GRANTS, CONVEYS, TRANSFERS AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE and right of entry and possession, all of Borrower's present and future estate, right, title and interest in and to the following described property (collectively, the "Property"):

(A) The following described real property located in the County of **Los Angeles**, State of **California** (the "Land"):

See Exhibit "A" attached hereto and incorporated herein by this reference.

The street or common address of the Land is:

1101 S. Flower Street, Los Angeles, California 90015;

(B) All Buildings, Fixtures, Easements, Rents and Profits, Development Rights, Water Rights, Mineral Rights, and Crops (as each of such terms is defined in Article 1 of this Deed of Trust).

THIS DEED OF TRUST SECURES THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (collectively, the "Obligations") in such order of priority as Lender may from time to time elect:

(1) Payment and performance of Borrower's indebtedness and obligations under the promissory note of even date herewith in the original face principal amount of **Three Hundred Twenty-Five Million and 00/100 Dollars ($325,000,000.00)** executed by Borrower and payable to Lender, or order, and all extensions, renewals, modifications, and replacements thereof (collectively, the "Note");

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5138-015-026, 028 THRU 038,

(2) Payment and performance of Borrower's indebtedness and obligations under this Deed of Trust and all extensions, renewals, modifications, and replacements of this Deed of Trust;

(3) Payment of all sums of money which may be advanced by, or otherwise due to, Trustee or Lender under any provision of this Deed of Trust or to protect the security of this Deed of Trust, with interest thereon at the rate provided in this Deed of Trust;

(4) Payment and performance of Borrower's indebtedness and obligations under the Loan Agreement of even date herewith between Borrower and Lender which states that it is secured by this Deed of Trust and all extensions, renewals, modifications, and replacements thereof (the "Loan Agreement"),

(5) Payment and performance of all indebtedness and obligations owing on account of each future loan that Lender may elect to make to Borrower or the record owner of the Land when the promissory note evidencing such loan specifically states that it is secured by this Deed of Trust, and all extensions, renewals, modifications, and replacements thereof (such loans are referred to individually as a "Future Advance" and collectively as the "Future Advances"); and

(6) Payment and performance of Borrower's indebtedness and obligations under all other existing and future agreements executed by Borrower in connection with the loan evidenced by the Note (the "Loan") or in connection with any Future Advance, with interest thereon at the rate provided in such agreements, when such agreement specifically states that it is secured by this Deed of Trust, and all extensions, renewals, modifications, and replacements of such agreements.

FOR VALUABLE CONSIDERATION, Borrower agrees as follows:

ARTICLE 1

DEFINITIONS

All terms with an initial capital letter that are used but not specifically defined in this Deed of Trust shall have the respective meanings given to such terms in the Loan Agreement. For purposes of this Deed of Trust, the following terms shall have the following definitions:

1.1 Affiliate. "Affiliate" means (a) any Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Borrower, any general partner of Borrower (if Borrower is a partnership), any shareholder of Borrower (a "Corporate Principal") (if Borrower is a corporation), any Manager of Borrower (if Borrower is a limited liability company), or any Guarantor; (b) any General Partner, Corporate Principal, Manager, or Guarantor; (c) any entity, twenty percent (20%) or more of the equity interests of which are held beneficially or of record by Borrower, any General Partner, any Corporate Principal, any Manager, or any Guarantor; and (d) if Borrower or any of the Guarantors is a corporation, partnership, or limited liability company, any shareholder, director, officer, general partner, manager, or managing member of Borrower or any of the Guarantors. As used in this Section, the term "control" means the possession, directly or indirectly, of the right or power to cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, family relationship, or otherwise.

1.2 Books and Records. "Books and Records" means all books and records relating to the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including (a) records reflecting the results of operation of the Property; (b) all Leases and other documents relating to the Property; and (c) Borrower's federal income tax returns for the year in which the Loan is made and each subsequent year that the Loan is outstanding.

1.3 Buildings. "Buildings" means all buildings, structures and other improvements now existing or hereafter located on the Land.

1.4 Commercial Project. "Commercial Project" means a multifamily residential project or a retail, office, industrial or other commercial project which produces or generates or is intended to produce or generate any form of Rents and Profits from its operation.

1.5 Commercial Space. "Commercial Space" means the rentable space in the Improvements that Borrower has represented to the Lender will be developed on the Land as commercial space for lease, which commercial space is expected to consist of approximately 180,404 square feet of floor area.

1.6 Condemnation Claims. "Condemnation Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any condemnation of the Property or other taking of the Property for public or quasi-public use by eminent domain or to the transfer of the Property in lieu of condemnation or any such taking.

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1.7 **Condemnation Proceeds**. "Condemnation Proceeds" means all proceeds of the Condemnation Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Condemnation Claims

1.8 **Covenants and Restrictions**. "Covenants and Restrictions" means all covenants, conditions, restrictions, equitable servitudes, and all other similar matters now or hereafter affecting the Property, including any condominium, planned unit development, or cooperative apartment declaration of covenants, conditions and restrictions, by-laws, articles, rules, and regulations to which Borrower or the Property is subject or bound.

1.9 **Crops**. "Crops" means all crops, trees and vines now or hereafter growing on the Land.

1.10 **Development Rights**. "Development Rights" means all existing and future development rights, development credits, air rights, and options of any kind relating to the Property.

1.11 **Easements**. "Easements" means all existing and future easements, rights of way, licenses, and similar rights relating or appurtenant to the Property and all existing and future rights in or to streets, roads, sidewalks, alleys, strips and gores adjoining or used in connection with the Property.

1.12 **Event of Default**. "Event of Default" means any of the events described in Article 3 of this Deed of Trust.

1.13 **Fixtures**. "Fixtures" means all fixtures, machinery, equipment, building materials, and appliances now or hereafter located in, on, attached or affixed to, or used in connection with the Land or the Buildings, including all systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light; elevators, escalators and related machinery and equipment; fire prevention and extinguishing equipment and water sprinkler systems; security and access control equipment; water heaters, showers, bathtubs, tanks, pumps, toilets, sinks, pipes, and other plumbing fixtures and equipment; stoves, ranges, refrigerators, dishwashers, and disposals; laundry equipment; engines, motors, generators, boilers, furnaces, and incinerators; wall, window, and floor coverings, including screens, shades, drapes, and awnings; partitions, doors, windows, cabinets, bookcases, and hardware; janitorial, maintenance, and waste and rubbish removal equipment; recreational equipment, signs; switchboards, telephone systems, and other communication equipment; television, radio, and computer cables, antennae, and other equipment; chandeliers and other light fixtures; trees, plants and other landscaping; and all attachments, substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing, all of which shall conclusively be deemed to be part of the Land and Buildings and conveyed by this Deed of Trust, whether or not affixed or attached to the Land.

1.14 **Governmental Authorities**. "Governmental Authorities" means (a) the United States; (b) the state, county, city, or other political subdivision in which the Land is located; (c) all other governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities or authorities, and (d) all judicial authorities and public utilities having or exercising jurisdiction over Borrower or the Property.

1.15 **Governmental Permits**. "Governmental Permits" means all permits, approvals, and authorizations now or hereafter issued by all Governmental Authorities for or in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including grading permits, foundation permits, building permits, tentative subdivision map approvals, zone changes, zone variances, conditional use permits, temporary certificates of occupancy, and final certificates of occupancy.

1.16 **Governmental Requirements**. "Governmental Requirements" means all existing and future laws, ordinances, rules, regulations, orders, and requirements of all Governmental Authorities applicable to Borrower or the Property, including those respecting the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property.

1.17 **Ground Lease**. "Ground Lease" means any lease agreement creating a leasehold estate which is now or hereafter encumbered by this Deed of Trust.

1.18 **Guaranties**. "Guaranties" means the guaranty agreement or agreements executed by the Guarantors.

1.19 **Guarantors**. "Guarantors" means the Person or Persons, if any, now or hereafter guaranteeing payment of the Note or payment or performance of any or all of the other Obligations

1.20 **Hotel Space**. "Hotel Space" means the space in the Improvements that Borrower has represented to the Lender will be developed on the Land as a hotel facility (including related restaurant facilities, banquet rooms, a nightclub, and a health club/spa), which hotel facility is expected to consist of approximately 183 hotel rooms (collectively, the "Hotel Rooms") and a total of approximately 328,203 square feet of floor area.

1.21 **Impositions**. "Impositions" means all (a) Taxes; (b) Insurance Premiums; (c) gas, electricity, water, sewer, and other utility charges which are incurred for the benefit of the Property or which may become a lien against the Property; (d) assessments, charges, and fees imposed pursuant to any Covenants and Restrictions; (e) assessments, charges and fees payable with respect to any Easements, Water Rights or Development Rights; (f) principal, interest, and other amounts payable in

connection with any Liens; (g) rents and other amounts payable under any Ground Lease; and (h) such other taxes, charges, premiums, assessments and impositions relating to the Property, the payment of which Lender determines to be necessary to protect Lender's security for the Obligations.

1.22 **Improvements**. "Improvements" means the Buildings and Fixtures, collectively.

1.23 **Insurance Claims**. "Insurance Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise under any policy of insurance which Borrower maintains with respect to the Property or which Borrower is required to maintain under this Deed of Trust (collectively, the "Insurance Policies").

1.24 **Insurance Proceeds**. "Insurance Proceeds" means all proceeds of the Insurance Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Insurance Claims.

1.25 **Insurance Premiums**. "Insurance Premiums" means all premiums and other amounts payable in connection with procuring or maintaining the Insurance Policies.

1.26 **Leases**. "Leases" means all existing and future rental agreements, leases, licenses, concessions, occupancy agreements, and other similar agreements affecting the Property, including all subleases at any level.

1.27 **Liens**. "Liens" means all mortgages, deeds of trust, mechanics' liens, and other liens and encumbrances of every kind and nature, other than this Deed of Trust, now or hereafter affecting the Property.

1.28 **Loan Documents**. "Loan Documents" means the Note, this Deed of Trust, the Loan Agreement, all promissory notes evidencing any Future Advances, all other documents secured by this Deed of Trust, and all other documents executed by Borrower or any of the Guarantors, respectively, and delivered to Lender at Lender's request in connection with the Loan or any Future Advance, and all extensions, renewals, modifications, and replacements of such documents.

1.29 **Material Adverse Change**. "Material Adverse Change" shall mean any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Deed of Trust or any of the other Loan Documents; (b) is or could reasonably be expected to be material and adverse to the Property or to the business, properties, assets, financial condition, results of operations or prospects of the Borrower or any of the Guarantors; (c) impairs materially or could reasonably be expected to impair materially the ability of Borrower or any of the Guarantors to duly and punctually pay its Obligations and/or perform its other obligations under the Loan Documents to which it is a party, or (d) impairs materially or could reasonably be expected to impair materially the ability of the Lender, to the extent permitted by Governmental Requirements and the Loan Documents, to enforce its legal and/or contractual rights and remedies pursuant to this Deed of Trust or any of the other Loan Documents.

1.30 **Mineral Rights**. "Mineral Rights" means all existing and future right, title, and interest in and to all minerals, oil, gas and other hydrocarbon substances in or on the Property.

1.31 **Person**. "Person" means any natural person or any entity, including any corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, Trustee, or Governmental Authority.

1.32 **Property Claims**. "Property Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature (other than the Insurance Claims and Condemnation Claims) which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any or all of the following: (a) the Property; (b) any existing or future fact, matter, occurrence, or transaction relating to the Property; or (c) the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

1.33 **Property Proceeds**. "Property Proceeds" means all proceeds of the Property Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Property Claims.

1.34 **Rents and Profits**. "Rents and Profits" means all existing and future rents, royalties, issues, profits, proceeds, revenues, income and other benefits of the Property and all Leases, including all security deposits and prepaid rent.

1.35 **Residential Space**. "Residential Space" means the space in the Improvements that Borrower has represented to the Lender will be developed on the Land as residential condominiums to be marketed and sold by Borrower to the general public, which condominiums are expected to consist of approximately 504 residential condominium units and related improvements

1.36 **Stated Loan Advance Maturity Date**. "Stated Loan Advance Maturity Date" shall have the meaning given to such term in the Note.

1.37 **Taxes**. "Taxes" means (a) all taxes, bonds, levies and assessments now or hereafter affecting the Property, including all general and special real and personal property taxes, bonds, and assessments affecting the Property; (b) all other taxes, bonds, levies and assessments which now are or hereafter may become a lien on the Property, including all income, profits, franchise, withholding, and gross receipt taxes; (c) all other charges now or hereafter imposed on or assessed against the Property by any Governmental Authority or arising with respect to the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property; and (d) all taxes, bonds, levies, and assessments now or hereafter imposed by any Governmental Authorities on Trustee or Lender by reason of their respective interests in this Deed of Trust, the Note, or any promissory note evidencing a Future Advance, excluding any franchise, estate, inheritance, income, or similar tax imposed on Lender or Trustee.

1.38 **Tenants**. "Tenants" means all tenants and occupants of the Property under the Leases.

1.39 **Water rights**. "Water rights" means all existing and future water, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), and all water stock relating to the Property.

ARTICLE 2

COVENANTS OF BORROWER

2.1 **Performance of Secured Obligations**. Borrower shall pay and perform each and all of the Obligations in accordance with their respective terms

2.2 **Preservation of the Property**. Borrower (a) shall maintain the Property in good condition and repair, , including all maintenance and repairs necessary or appropriate in order for the Property to be fit and suitable in all respects for human habitation as a residential dwelling (excluding any part of the Property that is not zoned under applicable Governmental Requirements for use as a residential dwelling unit or currently used as a residential dwelling unit); (b) shall promptly repair and restore in a good and workmanlike manner any part of the Property which may be damaged or destroyed, whether or not any Insurance Proceeds are adequate to pay for the cost of such repair and restoration, (c) shall comply and cause the Property to comply with the provisions of all Insurance Policies; (d) shall comply and cause the Property to comply with all Governmental Requirements; (e) shall comply and cause the Property to comply with all Covenants and Restrictions; (f) shall maintain in effect all Governmental Permits; (g) shall not initiate, join in or consent to any change in the zoning, general plan, specific plan, or any other land use classification affecting the Property or any Covenant or Restriction without the prior written consent of Lender; (h) shall not remove, demolish, improve, add to, or alter the Improvements (excluding non-structural alterations which preserve or increase the value of the Property, alterations required by Governmental Requirements, and the replacement of Fixtures in the ordinary course of business pursuant to Section 2.18 below) or change the character or use of the Property without the prior written consent of Lender; (i) shall not commit or permit any waste respecting the Property or impairment of the Property, (j) shall not abandon the Property; (k) shall not commit or permit any act upon the Property in violation of any Governmental Requirements; (l) shall promptly complete in a good and workmanlike manner all Improvements which Borrower commences to construct on the Land; and (m) shall paint, cultivate, irrigate, fertilize, fumigate, prune, maintain and do all other acts, in a timely and proper manner, which from the character or use of the Property may be necessary or appropriate to preserve, protect and maintain the value of the Property

2.3 **Insurance**. Borrower shall at all times maintain in full force (a) fire and extended coverage all risk insurance, together with such endorsements as Lender may require, including vandalism, malicious mischief, earthquake, and flood coverage (if the Land is now or hereafter located in an area designated by the Director of the Federal Emergency Management Agency as a flood hazard area and flood insurance is or becomes available through the National Flood Insurance Program); (b) commercial general liability insurance; and (c) such other types of insurance as may from time to time be required by Lender, including business interruption insurance, rental loss insurance, and workers' compensation insurance. Each of the Insurance Policies, including the amounts, form, coverage, deductibles, insurer and loss payable and cancellation provisions, shall be acceptable to Lender. Without limiting any of the terms of this Section, (i) each of the Insurance Policies shall provide that it may be canceled or modified only upon not less than thirty (30) days prior written notice to Lender; (ii) the fire and extended coverage and other casualty insurance policies which Borrower is required to maintain under this Deed of Trust shall contain a mortgagee's loss payable endorsement acceptable to Lender naming Lender as loss payee and shall be written with liability in an amount equal to the full replacement cost of the Improvements; and (iii) the commercial general liability policy which Borrower is required to maintain shall name Lender as an additional insured and shall be primary and noncontributing with any insurance maintained by Lender.

2.4 **Insurance Policies**. Upon Lender's request, Borrower shall deliver to Lender the originals of all Insurance Policies together with receipts for the full payment of all Insurance Premiums, and Lender shall have the right to hold such policies as long as any Obligations are outstanding By approving, disapproving, accepting, obtaining or failing to obtain any Insurance Policies, Lender shall not be liable or responsible for the suitability, adequacy, enforceability, validity, amount, form, or content of any Insurance Policies, the solvency of any insurer, or the collection of any Insurance Proceeds, and Borrower shall at all times have full responsibility for all of such matters. Not later than thirty (30) days prior to the expiration of each of the Insurance Policies, Borrower shall deliver to Lender a policy or policies renewing or extending the expiring Insurance Policies together with written evidence showing payment of the Insurance Premiums for such policies. If Borrower fails to deliver any of the Insurance Policies to Lender in accordance with this Deed of Trust, or if any of the Insurance Policies is canceled, Lender, without notice to or demand upon Borrower, shall have the right to obtain such insurance in such form, content and amount and with such insurer as Lender

determines to be necessary or appropriate to protect its interest. Without limiting any other provision of this Deed of Trust, all premiums and other costs and expenses paid or incurred by Lender in connection with Lender's obtaining any Insurance Policies under this Section shall be payable by Borrower to Lender on Lender's demand. Neither Trustee nor Lender shall be obligated to obtain or maintain any policy of insurance with respect to the Property. All Insurance Policies relating to the Property and all unearned Insurance Premiums shall automatically inure to the benefit of and be deemed to be assigned to the grantee of the Property at any judicial or nonjudicial foreclosure sale under this Deed of Trust or by any deed in lieu of foreclosure under this Deed of Trust.

2.5 Assignment of Insurance Claims and Proceeds. To secure the Obligations, Borrower grants, transfers, and assigns to Lender the Insurance Claims and Insurance Proceeds.

2.6 Assignment of Condemnation Claims and Proceeds and Other Claims. To secure the Obligations, Borrower grants, transfers, and assigns to Lender the Condemnation Claims, Condemnation Proceeds, Property Claims, and Property Proceeds.

2.7 Payment of Proceeds. Borrower shall cause all Insurance Proceeds, Condemnation Proceeds and Property Proceeds (collectively, the "Proceeds") to be paid or delivered directly to Lender. Lender shall at all times have the right but not the obligation (a) to demand, collect, accept, receive and give receipts for any and all of the Proceeds; and (b) to direct any Person to pay or deliver any or all of the Proceeds directly to Lender. Nothing contained in this Deed of Trust shall be deemed to obligate Lender to make any inquiry as to the sufficiency of any Proceeds received by Lender. If for any reason Borrower receives any Proceeds, Borrower (i) shall immediately pay or deliver such Proceeds to Lender in the original form in which received by Borrower; (ii) shall endorse, with recourse, all checks, drafts, money orders, notes, and other instruments or documents representing such Proceeds to Lender; (iii) shall not commingle such Proceeds with any of Borrower's other funds or property; and (iv) shall hold such Proceeds separate and apart from its other funds and property in an express trust for Lender until paid or delivered to Lender.

2.8 Prosecution and Settlement of Claims. Prior to the occurrence of any Event of Default, Borrower shall have a license to prosecute and enforce the Insurance Claims, Condemnation Claims, and Property Claims (collectively, the "Claims"). Lender shall at all times have the right to appear in, defend, and prosecute any action or proceeding arising out of or relating to any or all of the Claims if Lender determines that such action is necessary or appropriate to protect Lender's interest in connection with the Obligations. Upon the occurrence of an Event of Default, Borrower's license to prosecute and enforce the Claims shall be revoked upon, and to the extent provided in, notice by Lender to Borrower. Following such revocation, Lender, at its option, shall have the exclusive right to prosecute and enforce any or all of the Claims to the extent provided in Lender's notice of revocation and to compromise, adjust, settle or dismiss any or all of the Claims, whether or not Lender has taken possession of the Property. Without Lender's prior written consent, Borrower shall not (a) sell, transfer, pledge, hypothecate or otherwise dispose of or abandon any or all of the Claims; or (b) compromise, adjust, settle, or dismiss any or all of the Claims.

2.9 No Liability by Lender. Nothing contained in this Deed of Trust shall be deemed to obligate Lender to prosecute or enforce any or all of the Claims nor shall Lender have any liability or responsibility for any failure or delay by Lender in prosecuting or enforcing any or all of the Claims or to collect any or all of the Proceeds. Borrower shall at all times have the right to determine and follow its own policies and practices in the conduct of its business, subject to the terms and conditions of the Loan Documents. Nothing contained in this Deed of Trust nor Lender's receipt of any Proceeds shall result in any obligation or liability by Lender for the performance or observance of any of the terms of any document or Insurance Policies relating to any or all of the Claims or the Proceeds.

2.10 Application of Proceeds. Lender, at its option, shall have the right (a) to apply any or all Proceeds received by Lender to any or all of the Obligations in such order and manner as Lender shall determine, whether or not such Obligations are then due and payable and without regard to the adequacy or impairment of the security for the Obligations; (b) to release any or all of the Proceeds received by Lender for payment of the costs of repair or reconstruction of the Property on such terms and conditions as may be acceptable to Lender; or (c) to release any or all of the Proceeds received by Lender to Borrower on such terms and conditions as may be acceptable to Lender. If and to the extent that the Note provides for Borrower's payment of a prepayment charge, such prepayment charge shall not apply with respect to principal prepayments resulting from Lender's election to apply any Proceeds to the outstanding principal balance of the Note. Notwithstanding anything to the contrary in this Section, provided that no Event of Default has occurred and is continuing, the Lender shall permit Insurance Proceeds in an amount not to exceed Five Million and 00/100 Dollars ($5,000,000.00) to be used for the repair and reconstruction of the Improvements, provided that the total cost of such repair or reconstruction work does not exceed a total of Five Million and 00/100 Dollars ($5,000,000 00) and the conditions contained in Section 2.11 below are satisfied, as determined by the Lender.

2.11 Release of Proceeds for Reconstruction. Without limiting the generality of Section 2.10 above, if Lender elects to release any Proceeds for repair or reconstruction of the Property, at Lender's option, such release shall be conditioned on Borrower's satisfaction of the following conditions within one hundred and twenty (120) days after the occurrence of the damage requiring the repair or reconstruction: (a) Borrower's deposit with Lender of such funds in addition to the Proceeds as Lender determines to be necessary to pay all direct and indirect costs relating to the repair or reconstruction of the Property; (b) the establishment of a procedure acceptable to Lender for Lender's disbursement of the Proceeds; (c) Lender's receipt and approval of final plans and specifications and a cost breakdown for the repair or reconstruction of the Property; (d) Lender's receipt and approval of (i) a general construction contract for the repair or reconstruction of the Property executed by Borrower and a contractor acceptable to Lender; and (ii) payment and performance bonds written on such general contractor issued by a surety acceptable to Lender; (e) evidence acceptable to Lender that (i) the repair and reconstruction of the Property can be completed and a final and unconditional certificate of occupancy for the Property can be issued not later than thirty (30) days before the earliest "Stated Loan

Advance Original Maturity Date" (as such term is defined in the Note); (ii) upon completion of the repair or reconstruction of the Property, the income from the Property will be sufficient to pay all Impositions, operating expenses of the Property and installment payments due in connection with the Loan and any Future Advances, (iii) leases acceptable to Lender will be in effect or remain in effect upon completion of the repair or reconstruction of the Property; (iv) upon completion of the repair or reconstruction of the Property, the fair market value of the Property will be at least as great as it was prior to the date on which the damage or condemnation occurred as shown in an appraisal acceptable to Lender; (v) there has been no adverse change in the financial condition of Borrower since the date of this Deed of Trust that would materially impair the ability of the Borrower to comply with its obligations under the Loan Documents; and (vi) there has been no adverse change in the financial condition of any of the Guarantors since the date of this Deed of Trust that would materially impair the ability of such Guarantor to comply with its obligations under its Guaranty; and (vi) no Event of Default exists; and (f) such additional conditions as Lender may establish.

2.12 Taxes and Impositions. Borrower (a) shall pay all Taxes at least ten (10) days before delinquency; and (b) shall pay all other Impositions when due. Upon Lender's request, Borrower shall deliver to Lender receipts and such other substantiating documentation as may be required by Lender to evidence payment of all Impositions by Borrower in accordance with this Section. Borrower shall cause to be furnished to Lender a reporting service for all Taxes of a type and duration and with a company acceptable to Lender.

2.13 Impounds.

(a) Impound Account. If Borrower fails to pay any of the Impositions before such payment becomes delinquent, or at any time following the occurrence of any Event of Default, upon not less than ten (10) days prior written notice by Lender to Borrower, Lender, at its option, shall have the right to require Borrower (1) to deposit with Lender, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual amount of any or all Impositions as may be designated by Lender (including Taxes and Insurance Premiums), as determined by Lender; and (2) establish with and pay to Lender a reserve for any or all Impositions as may be designated by Lender equal to two of the monthly installments described in clause (1) of this sentence. If Lender exercises its right to require Borrower to make such deposits with Lender, Borrower shall deliver to Lender all bills, statements, and invoices relating to the Impositions immediately upon Borrower's receipt of such items. The amounts deposited by Borrower with Lender pursuant to this Section 2.13 (collectively, the "Impound Funds") (i) shall not be deemed to be held by Lender in trust or as agent of Borrower; (ii) shall not bear interest, except as otherwise expressly required by law, (iii) shall be applied by Lender to the payment of the Impositions in such order of priority as Lender shall determine, provided Borrower has delivered to Lender the appropriate bills, statements and invoices relating to the Impositions not later than thirty (30) days prior to the due date thereof; and (iv) may be commingled by Lender with its general funds. If, at any time within thirty (30) days prior to the due date of any of the Impositions, Lender determines that the Impound Funds then held by Lender are insufficient to pay such Impositions in full, upon Lender's demand, Borrower shall deposit with Lender the amount of such deficiency, as determined by Lender. If the Impound Funds held by Lender exceed the amount necessary to discharge the Impositions for which such Impound Funds were deposited, Lender, at its option, may either refund such excess to Borrower or may hold such excess and reduce proportionately the periodic deposits required to be made by Borrower for payment of the Impositions. Without limiting this Section, if required by the Lender in connection with the closing and initial funding of the Loan, without regard as to whether any Event of Default exists, the Lender may require that Borrower establish an impound account in accordance with this Section during all or any part of the term of the Loan.

(b) Security Interest. Borrower grants a security interest to Lender in all Impound Funds deposited by Borrower with Lender under this Section 2.13 to secure the Obligations. Upon the occurrence of any Event of Default, Lender, at its option and without regard to the adequacy of any other collateral securing the Obligations, shall have the right to apply any or all of the Impound Funds to any or all of the Obligations in such amounts and order as Lender may determine.

(c) Assignment; Reconveyance. If Lender assigns this Deed of Trust, Lender shall have the right to transfer all Impound Funds held by Lender to Lender's assignee. Upon such transfer, Lender shall have no further liability of any kind with respect to the Impound Funds, and Lender's assignee shall be deemed to have assumed all liabilities of Lender with respect to the Impound Funds. Following full payment and performance of all of the Obligations and the reconveyance of the Property under this Deed of Trust, Lender shall refund to Borrower any Impound Funds then held by Lender.

(d) No Liability for Insufficient Impound Funds. Nothing contained in this Section 2.13 shall be deemed (i) to require Lender to pay any amounts on account of any Impositions in excess of the Impound Funds held by Lender; or (ii) to impair, prejudice or otherwise affect any of Lender's rights or remedies under this Deed of Trust or under Governmental Requirements to pay any or all of the Impositions if the Impound Funds then held by Lender are insufficient for such purposes and to add the amount paid by Lender to the Obligations.

2.14 Absolute Assignment of Rents and Profits.

(a) Absolute Assignment. Borrower absolutely, irrevocably and unconditionally grants, transfers and assigns to Lender all Rents and Profits. Prior to the occurrence of an Event of Default, Borrower shall have a license to collect and retain on the terms of this Section 2.14 all Rents and Profits as they become due and payable. Upon the occurrence of an Event of Default, Borrower's license to collect the Rents and Profits shall automatically be revoked without notice to Borrower. Following such revocation, Lender shall be entitled to collect and retain all Rents and Profits, whether or not Lender has taken possession of the Property, and Borrower shall immediately pay or deliver to Lender any Rents and Profits then held or thereafter collected by Borrower. All Rents and Profits collected by or on behalf of Lender may be applied by Lender to the Obligations in such order and amounts as Lender may determine. If Lender elects to seek the appointment of a receiver following the occurrence of an Event of

Default, Borrower irrevocably and unconditionally consents to the appointment of a receiver without regard to the adequacy of the security for any of the Obligations. Notwithstanding anything to the contrary contained in this Deed of Trust, the assignment of Rents and Profits contained in this Section is an absolute assignment and not an assignment as security. Neither the assignment of Rents and Profits contained in this Section nor any action taken by Lender to collect the Rents and Profits shall be deemed to make Lender a mortgagee-in-possession of the Property or shall be deemed to render Lender directly or indirectly liable or responsible for (i) the use, control, condition, care, operation, occupancy, management, repair, or leasing of the Property; (ii) the production of Rents and Profits from the Property; or (iii) the performance or observance of any or all of Borrower's duties, obligations, representations, or warranties under any Leases or other agreements relating to the Rents and Profits. Lender shall have no responsibility or liability of any kind for any failure or delay by Lender in enforcing any of the terms or conditions of this Section 2.14.

(b) **Applications of Rents and Profits Prior to Revocation of License.** Borrower shall apply the Rents and Profits to the payment of all reasonable and necessary operating costs and expenses of the Property, installment payments due in connection with the Loan and any Future Advances, payment of Impositions, and a reasonable reserve for future reasonable and necessary expenses, repairs and replacements relating to the Property before using the Rents and Profits for any other purpose which does not directly benefit the Property.

(c) **Notices to Tenants.** Upon revocation of the license described in Section 2.14(a) above, Borrower irrevocably authorizes and directs all Tenants under the Leases to comply with any notice or demand by Lender for payment to Lender of any Rents and Profits or for the performance of any of the Tenant's other respective obligations under the Leases, regardless of any conflicting demand by Borrower or notice by Borrower to any Tenant that Lender's demand is invalid or wrongful. No Tenant shall have any duty to inquire as to whether any default by Borrower has occurred under the Loan Documents in connection with any notice or demand by Lender under this Section.

2.15 **Sales, Transfers, and Further Encumbrances; Certain Conditionally Permitted Transfers.**

(a) **Sales, Transfers, and Further Encumbrances; Certain Conditionally Permitted Transfers.** Except as expressly permitted by Sections 2.15(b) and 2.15(c) below, Lender shall have the right, at its option and without notice to or demand on Borrower, to declare any or all Obligations to be immediately due and payable if any of the following events occurs without Lender's prior written consent: (a) the sale, conveyance, transfer, mortgage, encumbrance, lease (except for the leasing of space in the Improvements which is permitted under Section 2.19 below), or alienation of all or any part of the Property or any interest in the Property, whether voluntary or involuntary, or Borrower's grant of any option or agreement to effect any such transaction; (b) if Borrower or any General Partner or Manager of Borrower is a partnership, the admission, withdrawal, retirement or removal of any general partner of Borrower or any of Borrower's General Partners or Managers, or the sale or transfer of more than fifteen percent (15%) of the beneficial interests in Borrower or any of Borrower's General Partners or Managers; (c) if Borrower or any General Partner or Manager of Borrower is a corporation, the sale or transfer of an aggregate of more than fifteen percent (15%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust; (d) if Borrower or any General Partner or Manager of Borrower is a limited liability company, the appointment, withdrawal, retirement or removal of any Manager of Borrower or any of Borrower's General Partners or Managers or the sale or transfer of more than fifteen percent (15%) of the beneficial interests in Borrower or any of Borrower's General Partners or Managers; (e) if Borrower or any of Borrower's General Partners or Managers is a corporation, partnership, or limited liability company, the dissolution or liquidation of Borrower or any of Borrower's General Partners or Managers; or (f) any material change in the character or use of all or part of the Property, including drilling for or the extraction of oil, gas or any other hydrocarbon substance or the lease of all or any part of the Property for any such purpose. Without limiting the generality of any provision of this Deed of Trust (including Section 6.8 below), Lender's consent to any or all of the events described in this Section may be withheld by Lender in its sole and absolute discretion. Lender's consent to any event described in this Section shall not be deemed to be a consent to, or a waiver of the right to require such consent for, any other event. For purposes of this Deed of Trust, (i) the term "partnership" includes a general partnership, limited partnership, limited liability partnership, and joint venture; and (ii) the term "Manager" means any Person who is acting as a manager of a limited liability company, including any member who is acting in such capacity.

(b) **Bridge Loans; Senior Construction Loan.** Notwithstanding anything to the contrary contained in Section 2.15(a) above, (i) Borrower shall be permitted to obtain a Bridge Loan or Bridge Loans and, as security for such Bridge Loan or Bridge Loans, grant to the Bridge the Lender subordinate liens on the Property in accordance with the terms and conditions set forth in the Loan Agreement; and (ii) Borrower shall be permitted to obtain a Senior Construction Loan and, as security for such Senior Construction Loan, grant to the Senior Construction Lender a senior lien on the Property in accordance with the terms and conditions set forth in the Loan Agreement.

(c) **Certain Conditionally Permitted Transfers to Borrower Subsidiaries.** For purposes of this Section, (i) the term "Borrower Subsidiary" means a corporation, partnership, limited liability company, or other entity that is wholly owned and controlled by Borrower, and the term "Borrower Subsidiaries" means more than one Borrower Subsidiary; and (ii) the term "Project Element" means a separate and lawfully created portion of the Property consisting of one of the following: (A) the Hotel Space and its related facilities and the portion of the Property on which such Hotel Space and facilities are located; (B) the Residential Space and its related facilities and the portion of the Property on which such Residential Space and facilities are located; (C) the Commercial Space and its related facilities and the portion of the Property on which such Commercial Space and facilities are located; and (D) the LED billboard to be developed on the Property and its related facilities and the portion of the Property on which such LED billboard and facilities are located. Notwithstanding anything to the contrary contained in Section 2.15(a) above, from and after August 31, 2015, Borrower shall have a conditional one time right to either (x) transfer the entire Property to a single Borrower Subsidiary; or (y) transfer one or more of the four (4) Project Elements, each of which Project Elements is transferred to

the same or a different Borrower Subsidiary, on the following terms and conditions and subject to the satisfaction of the following conditions precedent (each such transfer is referred to as a "Transfer," and each Borrower Subsidiary to whom a Transfer is made is referred to as a "Transferee"):

(1) **Request by Borrower.** The Lender shall have received a request by Borrower with respect to the proposed Transfer or Transfers pursuant to the first sentence of Section 2.16 below;

(2) **Transferee.** The Lender shall have approved (A) each Transfer; and (B) the financial condition, credit history, character, experience, ability and expertise of each Transferee;

(3) **Transferee Organizational Documents.** The Lender shall have received and approved (A) complete and accurate copies of each Transferee's organizational documents and the documents which provide for the Transfer of the Property or a Project Element to the Transferee; and (B) such other information concerning the Transferee relevant to the Transferee's proposed assumption of the Loan, as the Lender may require;

(4) **Assumption Agreement.** Each Transferee, jointly and severally with all other Transferees and Borrower, shall have assumed (A) all of Borrower's indebtedness and obligations under the Note, and (B) all of Borrower's other Obligations under the Loan Documents insofar as such Obligations pertain or relate to the Project Elements transferred to such Transferee, which assumption transactions shall be accomplished pursuant to written assumption agreements, recordable memoranda thereof, and other documents acceptable to the Lender in form and substance (collectively, the "Assumption Agreement");

(5) **Title Endorsements.** The Lender shall have received title insurance endorsements acceptable to the Lender insuring the continuing first priority of the lien of this Deed of Trust following such assumption (or, following the Senior Construction Loan Closing, insuring the continuing second-priority lien of this Deed of Trust following such assumption);

(6) **Guaranties.** Each of the Guarantors shall have executed and delivered to the Lender (A) a written reaffirmation of such Guarantor's existing Guaranty of Borrower's Obligations under the Loan Documents; and (B) a new written guaranty (which shall be in substantially the same form and substance as the then existing Guaranties) of each Transferee's indebtedness and obligations to the Lender under the Assumption Agreement,

(7) **No Default.** No Event of Default shall then exist, and no other event shall then exist which, with the passage of time or the giving of notice, or both, may become an Event of Default;

(8) **No Material Adverse Change.** The Lender shall have determined that there is no Material Adverse Change;

(9) **Completion of Improvements.** The Lender shall have received and approved written agreements between Borrower and each of the Transferees, which agreements shall be acceptable to the Lender in form and substance, pursuant to which Borrower and the Transferees shall have agreed that (A) Borrower shall retain the exclusive responsibility and obligation to complete all Improvements to be constructed by Borrower on the Land pursuant to the Loan Agreement (as the term "completion" is defined in Section 3 2 of the Loan Agreement); and (B) Borrower (and its designated agents and contractors) shall have such access to, and right to possession of, the entire Land as may be reasonably necessary or appropriate in order for Borrower to complete all such Improvements in accordance with the terms and conditions of the Loan Agreement (whether such access is granted to Borrower by easement, license, or otherwise);

(10) **Subdivision Compliance.** With respect to the Transfer of any Project Element, the Lender shall have received satisfactory evidence that the Project Element being Transferred and the portion of the Property not being Transferred each complies with all applicable Governmental Requirements relating to the division and subdivision of real property,

(11) **EB-5 Compliance.** The Lender shall have determined that the proposed Transfer or Transfers are not reasonably anticipated to result in a claim by the USCIS that the Lender is failing to comply with the EB-5 Program and EB-5 Program Laws and that such Transfer or Transfers will not otherwise create a material risk that any of the Investors may be denied a temporary or permanent visa under the EB-5 Program;

(12) **Intentionally Omitted.**

(13) **Opinion of Borrower's Counsel.** The Lender shall have received an opinion or opinions of counsel for the Borrower, Transferee(s), and the Guarantors, respectively, in such form and content as may be reasonably acceptable to the Lender, including language which states that all documents evidencing the Transfer of the Property or Project Elements, as applicable, and the assumption of the Loan are valid and enforceable pursuant to their terms under applicable law and that the Borrowers, the Transferee(s), and the Guarantors each has the requisite power and authority to enter into the documents evidencing the Transfer(s) of the Property or Project Elements (as applicable) and the Assumption Agreement, together with any other documents or agreements required by the Lender pursuant to this Section 2.15(c);

(14) Further Documents. Borrower shall have executed and delivered to the Lender or otherwise obtained and delivered to the Lender such further documents, instruments, certifications, and consents as the Lender may reasonably require to effectuate the Transferee's assumption of the Loan on the terms of this Section.

(15) Borrower and Guarantors Remain Liable. The Borrower and Guarantors shall remain fully liable for all of their respective indebtedness and obligations under the Loan Documents, and Guaranties, as applicable, and if requested by the Lender, Borrower shall execute and deliver to the Lender a continuing guaranty of the Transferee(s)' obligations to the Lender under the Assumption Agreement, which guaranty shall be acceptable to the Lender in form and substance; .

(16) No Waiver by Lender. The Lender' conditional consent to a one-time transfer of the Property or Project Elements, as applicable, on the terms and conditions of this Section shall not be deemed to be a consent to, or a waiver of the Lender' right to require such consent for, any other event described in Section 2.15(a) of this Deed of Trust. Whenever the terms of Sections 2.15(c)(1) through 2 15(c)(15) above provide for the Lender's approval or acceptance of any document or other matter, such approval or acceptance shall not be unreasonably withheld. No approval or consent required to be obtained from the Lender under this Section 2.15(c) shall be deemed to be effective unless it is set forth in a written instrument executed by the Lender.

2.16 Request for Lender's Consent to Transfers. All requests by Borrower for Lender's consent under Section 2.15 above (a) shall specifically describe the transaction with respect to which Lender's consent is requested; (b) shall be delivered to Lender not less than thirty (30) days before Borrower proposes to take the action with respect to which Lender's consent is requested; (c) shall be accompanied by complete and accurate copies of all documents relating to the transaction with respect to which Lender's consent is requested, including financial statements and other information regarding the proposed transferee (including financial statements and tax returns for the transferee for the two (2) prior fiscal years (or such fewer number of fiscal years as the transferee has been in existence) and all documents pertaining (if the transferee is other than a natural person) to the legal formation and status of the transferee; and (d) shall be accompanied by a non-refundable review fee payable to Lender in the amount of $1,500. Borrower acknowledges and agrees that Lender's right to withhold its consent, in its sole and absolute discretion, to any or all of the events described in Section 2.15 above is based, in part, on the fact that Borrower's particular financial condition, credit history, character, experience, ability and expertise, as represented by Borrower to Lender, were material and important factors in Lender's decision to make the Loan, and that Lender will continue to rely on such matters to insure satisfactory compliance with the Loan Documents during the entire term of the Loan. If Lender, in its sole and absolute discretion, consents to any of the transactions described in Section 2.15 above, (i) such consent shall not be deemed to release Borrower or any other Person liable for payment or performance of the Obligations, and Borrower and such Persons shall continue to remain liable for payment and performance of the Obligations in accordance with the terms of the Loan Documents, unless expressly released pursuant to a further written agreement signed by Lender; and (ii) such consent shall be conditioned on [A] the payment to Lender of all costs, fees, and expenses incurred by Lender in connection with its review, analysis, and preparation of documents with respect to the proposed transaction, including all attorneys' fees and costs incurred by Lender; and [B] the satisfaction of such other conditions as Lender, in its sole and absolute discretion, may establish in connection with the proposed transaction. Nothing contained in this Section constitutes or shall be construed as an agreement by Lender to consent to any or all of the transactions described in Section 2.15 above or to impair or otherwise affect in any way Lender's right to withhold its consent to any or all of such transactions in Lender's sole and absolute discretion.

2.17 Subordinate Mortgages. If Lender consents to any other Lien on the Property ("Subordinate Mortgage"), or if the prohibition on Borrower's execution of any Subordinate Mortgage is unenforceable under Governmental Requirements, Borrower shall not execute any Subordinate Mortgage unless Borrower has first delivered to Lender a written agreement, acceptable to Lender, executed by the holder of the Subordinate Mortgage which provides that (a) the Subordinate Mortgage is and shall at all times remain unconditionally subject and subordinate to this Deed of Trust; (b) if any action or proceeding is commenced to foreclose the Subordinate Mortgage, no Tenant under any Lease shall be named as a defendant in such action or proceeding, nor shall such action or proceeding terminate any Lease, without Lender's prior written consent; (c) all Rents and Profits, whether collected directly by the holder of the Subordinate Mortgage or through a receiver, shall be applied first to the Obligations, second to the payment of the Impositions, and thereafter to payment of maintenance and operating costs relating to the Property; and (d) the holder of the Subordinate Mortgage shall give written notice to Lender not later than ten (10) days prior to commencing any judicial or nonjudicial action or proceeding to foreclose the Subordinate Mortgage. Borrower acknowledges and agrees that Lender's determination as to whether or not to grant its consent to any proposed Subordinate Mortgage shall be based upon, among other things, the debt coverage ratio of the combined Obligations secured by this Deed of Trust and the indebtedness to be secured by such proposed Subordinate Mortgage, in addition to such other factors as Lender, in its sole and absolute discretion, shall determine to be relevant or appropriate.

2.18 Fixtures. Notwithstanding Section 2.15 above, Borrower may from time to time replace any Fixtures constituting a part of the Property in the ordinary course of Borrower's business, provided that (a) the replacement property for such Fixtures is at least equivalent in value, character, and quality to the Fixtures being replaced, (b) Borrower has good and marketable title to such replacement property free and clear of all liens, claims, and interests other than the lien of this Deed of Trust; and (c) this Deed of Trust shall constitute a first lien on such replacement Property.

2.19 Permitted Leasing; Assignment of and Compliance with Leases.

(a) Permitted Leasing. Notwithstanding Section 2.15 above, Borrower shall have the right (x) to enter rental of the Hotel Rooms in the ordinary course of Borrower's operation of the Hotel Space (either directly or through a management company) without Lender's prior written consent, provided that such operations represent bona fide hotel business

operations on commercially reasonable market terms; and (y) to enter into Leases for the Commercial Space and for those portions of the Hotel Space intended to be leased to third Person operators (excluding the Hotel Rooms) (collectively, the "Rentable Commercial Space") in the ordinary course of Borrower's business without Lender's prior written consent ; and (y) to enter into Leases for the Commercial Space and for those portions of the Hotel Space intended to be leased to third Person operators (excluding the Hotel Rooms) (collectively, the "Rentable Commercial Space") in the ordinary course of Borrower's business without Lender's prior written consent, provided that all of the following conditions are satisfied with respect to the rental of the Rentable Commercial Space: (I) the term of such Lease, including any extension or renewal options, does not exceed a total of ten (10) years and either (A) the premises which are the subject of such Lease contain less than ten percent (10%) of the total rentable square footage of the Rentable Commercial Space; or (B) the gross annual base rent payable under such Lease is less than five percent (5%) of the total gross annual rent from all then existing Leases affecting the Rentable Commercial Space; (ii) the form used for such Lease represents a commercially reasonable lease form or has been approved in writing by Lender prior to Borrower's execution of the Lease; (iii) the rental and all other charges under such Lease (A) are not more favorable to the Tenant than pro forma rental and other charges which have been approved in writing by Lender not more than six (6) months prior to Borrower's execution of such Lease, and such approval has not been modified or revoked at the time the Lease is executed by Borrower; or (B) are at the then current fair market rate for comparable space and represent terms agreed upon in a bona fide arm's length lease transaction with a Tenant who is not in any way affiliated with Borrower; (iv) such Lease is unconditionally subordinate to this Deed of Trust and contains an attornment provision consistent with Section 2.20 below; (v) no Event of Default has occurred and is continuing at the time of Borrower's execution of such Lease; and (vi) Borrower provides Lender with an accurate and complete copy of such Lease within ten (10) business days after such Lease is executed by Borrower.

(b) **Assignment of Leases**. Borrower absolutely and unconditionally grants, transfers and assigns to the Lender all of Borrower's right, title, and interest in and to (i) all Leases now or hereafter affecting all or part of the Property, including the existing leases, if any, identified in Exhibit "B" attached to this Deed of Trust (collectively, the "Existing Leases"); (ii) all extensions, renewals, modifications and amendments to such leases; and (iii) all guaranties of and security for the Tenants' obligations under such leases .

(c) **License**. Prior to the occurrence of an Event of Default under the Loan Documents, Borrower shall have a license to exercise all of the lessor's rights under the Leases and to collect all Rents and Profits and other amounts payable by Tenants under the Leases, including all claims by Borrower for damages resulting from or arising out of any breach by any Tenant under any of the Leases (collectively, the "Rent") as the same becomes due and payable. Upon the occurrence of an Event of Default under the Loan Documents, Borrower's license to enforce the Leases and collect the Rent shall automatically be revoked without notice to Borrower Following such revocation, the Lender shall be entitled to enforce all of the lessor's rights under the Leases and collect and retain all Rent. The Lender shall have the right to apply all Rent collected by or on behalf of the Lender to the obligations secured by this Deed of Trust in such order and amounts as the Lender may determine in its sole and absolute discretion. No action taken by the Lender to collect Rent or enforce the Leases shall be deemed to make the Lender a mortgagee-in-possession of the Property Notwithstanding anything to the contrary contained in this Deed of Trust or in the other Loan Documents, Borrower's assignment of the Leases to the Lender is an absolute assignment and not an assignment as security.

(d) **Notice to Tenants**. Upon revocation of the license described in Section 2.19(c) above, Borrower irrevocably authorizes all Tenants under the Leases to comply with any notice or demand by the Lender for payment to the Lender of any Rent or for the performance of any of the Tenants' other obligations under the Leases, and no Tenant shall have any duty to inquire as to whether any default by Borrower has occurred under the Loan Documents.

(e) **Warranties and Representations by Borrower**. Borrower warrants and represents to the Lender that, except as specifically set forth in a written rent statement or other writing furnished by Borrower to the Lender prior to the date of this Deed of Trust, (i) there are no Leases or rental agreements affecting all or part of the Property other than the Existing Leases identified in Exhibit "B" attached to this Deed of Trust, and as of the date this Deed of Trust is recorded in the official records of the county in which the Property is located, no Leases or rental agreement will affect the Property other than the Existing Leases; (ii) Borrower has delivered to the Lender complete and accurate copies of the Existing Leases; (iii) no rent concessions have been given to any Tenant under any of the Existing Leases; (d) no rent has been prepaid in advance for more than one (1) month by any Tenant under any of the Existing Leases; (iv) no Tenant under any of the Existing Leases has any defenses to the enforcement of its Existing Lease, and no Tenant under any of the Existing Leases has any offsets or deductions to rent; (v) no Tenant under the Existing Leases has an option or right of first refusal to expand its premises or to purchase all or part of the Property; (vi) each of the Existing Leases is in full force and effect, and neither Borrower nor any Tenant is in default under any of the Existing Leases; and (vii) each of the Existing Leases constitutes the entire agreement with the Tenant thereunder, and none of the Existing Leases has been modified, amended, or supplemented in any respect.

(f) **Compliance with Leases**. Borrower shall perform and discharge all obligations of the lessor under the Leases in accordance with the terms thereof and shall diligently enforce all remedies available to Borrower in a commercially reasonable manner in the event of a default by the Tenant under any Lease.

(g) **Lease Documentation**. If, under the terms of the Loan Documents, the Lender's prior written consent is required in connection with Borrower's execution of any Lease, at the time the Lender's consent is requested by Borrower, Borrower shall submit to the Lender (i) a complete and accurate copy of the Lease with respect to which the Lender's consent is requested; (ii) the rental application of the Tenant under the Lease; (iii) if specifically requested by the Lender, a complete and accurate copy of a current financial statement for the Tenant under the Lease, certified by the Tenant as being true and correct, together with a credit report for the Tenant; (iv) an estoppel certificate satisfactory to the Lender in form and substance executed by the Tenant under the Lease; (v) a subordination, non-disturbance, and attornment agreement satisfactory to the Lender in form and

substance executed by the Tenant under the Lease; and (vi) such other information regarding the Tenant under the Lease and the proposed use of the space which is the subject of the Lease as the Lender may require. Upon the Lender's request from time to time, Borrower shall provide the Lender with the information and documents specified in clauses (i) through (vi) of this Section with respect to any or all Tenants leasing space in the Improvements.

(h) **No Liability by Lender**. Nothing contained in this Deed of Trust shall be deemed to render the Lender directly or indirectly liable or responsible for (i) the control, care, operation, management or repair of all or part of the Property; or (ii) the performance or observance of any or all of Borrower's duties, obligations, representations, or warranties as lessor under any of the Leases. The Lender shall have no responsibility or liability of any kind to Borrower for any failure or delay by the Lender in enforcing any of the terms or conditions of any of the Leases.

(i) **Indemnification**. Borrower shall indemnify and hold the Lender harmless from and against any and all claims, demands, damages, liabilities, actions, causes of action, suits, costs, and expenses, including attorneys' fees and costs, arising out of or relating to (i) any duty or obligation to be performed by Borrower or any representation or warranty made by Borrower as lessor under any of the Leases, or (ii) the Lender's exercise of any or all of the Lender's rights and remedies under this Section 2.19.

(j) **No Prior Assignments**. Borrower warrants and represents to the Lender that (i) Borrower holds or has acquired all of the lessor's rights under the Existing Leases; (ii) Borrower has not assigned the Leases to any other Person; and (iii) Borrower shall not assign the Leases to any other Person as long as Borrower remains indebted to the Lender in connection with the Loan, except as otherwise expressly permitted by the Loan Documents.

2.20 Attornment at Lender's Option. Each Tenant who enters into a Lease for the Property after the date of recordation of this Deed of Trust (each such Lease is referred to as a "Subordinate Lease") and who has not entered into a written non-disturbance and attornment agreement with Lender shall be deemed to have agreed to attorn to Lender and accept Lender as the landlord under its Lease on the terms of this Section. If Lender acquires title to the Property by judicial or nonjudicial foreclosure under this Deed of Trust or by deed in lieu of foreclosure under this Deed of Trust, Lender, at its option, shall have the right to require any or all Tenants under Subordinate Leases to attorn to and accept Lender as the landlord under such Tenant's Subordinate Lease (the "Attornment Option") by giving written notice to such Tenant within thirty (30) days after the date on which Lender acquires title to the Property (the "Acquisition Date"). If Lender exercises the Attornment Option with respect to any Subordinate Lease, such attornment shall be effective and self-operative as of the Acquisition Date without the execution of any further documents on the part of the Tenant, Lender, or any other party, and the Tenant under the Subordinate Lease shall be bound to Lender under all of the terms, covenants, and conditions of the Subordinate Lease for the remaining balance of the term thereof, with the same force and effect as if Lender were the landlord under such Lease. Whether or not Lender exercises its Attornment Option with respect to any Subordinate Lease, Lender (a) shall not be liable for any act or omission of any prior landlord under any Subordinate Lease, including Borrower; (b) shall not be subject to any offset, defense, or claim which any Tenant may have against any prior landlord under any Subordinate Lease, including Borrower; (c) shall not be obligated (i) to return any security deposit now or hereafter paid by any Tenant; (ii) to return any prepaid rent or other amounts prepaid by any Tenant; or (iii) to grant any Tenant a credit for any such security deposit, prepaid rent or other prepaid amounts (excluding monthly rent and other charges which have not been prepaid for more than one month in advance), except to the extent, if any, that Lender has actually and unconditionally received such security deposit, prepaid rent or other prepaid amounts; and (d) shall not be obligated to complete the construction of any or all Improvements. Without limiting the terms of this Section, upon Lender's request, each Tenant under a Subordinate Lease shall execute and deliver to Lender any document which Lender determines to be necessary or appropriate to evidence such Tenant's attornment to Lender on the terms of this Section, including a new lease with Lender on the same terms and conditions as the Subordinate Lease for a term equal to the unexpired term of the Subordinate Lease. Nothing contained in this Section shall be deemed to obligate Lender to recognize any Subordinate Lease or accept an attornment by any Tenant upon Lender's acquisition of title to the Property. If Lender elects not to exercise the Attornment Option within the time period specified in this Section with respect to any Subordinate Lease, such Subordinate Lease and all of the rights, privileges and powers of the Tenant thereunder shall automatically terminate and shall be of no further force or effect from and after the Acquisition Date.

2.21 Termination or Modification of Leases. Without Lender's prior written consent, and except as otherwise expressly permitted by the Loan Documents (including Section 2.22 below), Borrower shall not (a) terminate, cancel, accept a surrender of, agree to any material modification to, or waive any of Borrower's material rights under any of the Leases, except cancellation of a Lease based on a material default by the Tenant thereunder, (b) collect rent under any of the Leases for more than one (1) month in advance; (c) agree to subordinate any of the Leases to any other Lien; (d) discount the rent or other amounts payable under any of the Leases or release any Tenant or any other party liable for the performance of any Tenant's obligations under any of the Leases, (e) consent to any sublease or to the assignment of all or part of any Tenant's interest under the Leases; or (f) in any other manner impair Lender's rights with respect to or interest in the Rents and Profits. Any attempted termination, cancellation, surrender, modification, or subordination of a Lease in violation of this Section shall be void. Borrower shall give immediate written notice to Lender of (i) any material default by any Tenant under any of the Leases, (ii) any notice received by Borrower from any Tenant under any of the Leases claiming any material default or material breach by Borrower under such Tenant's Lease; and (iii) any other material default by Borrower under any of the Leases of which Borrower is aware. Upon Lender's request, Borrower shall furnish to Lender all material information which Lender may reasonably require regarding Borrower's or any Tenant's performance under any or all of the Leases.

2.22 Permitted Lease Modifications (Multifamily Projects). Notwithstanding Section 2.21 above, and provided that no Event of Default has occurred and is continuing under the Loan Documents, Borrower shall have the right to enter into a modification, amendment, or supplement to a Lease (referred to collectively as a "Lease Modification") without Lender's prior written

consent, provided that (a) the Lease Modification (i) is and at all times remains subordinate to this Deed of Trust; (ii) is not material in nature; (iii) does not affect the rent (including base rent, percentage rent, and common areas charges) payable by the Tenant, term, or any other monetary or economic term of such Lease, (iv) does not modify in any material respect the permitted use of the premises under such Lease, (v) does not change the identity of the Tenant under such Lease; and (vi) does not materially increase any obligation of the landlord under such Lease; and (b) Borrower provides Lender with a complete and accurate copy of the Lease Modification within ten (10) business days after such Lease Modification becomes effective.

2.23 **Lender's Approval of New Leases and Lease Modifications.** Provided that no Event of Default has occurred and is continuing under the Loan Documents, Lender shall exercise its right to grant or withhold its approval of any proposed new Lease ("New Lease") or Lease Modification which requires Lender's approval under the terms of the Loan Documents in Lender's good faith business judgment. Lender shall give written notice to Borrower of Lender's approval or disapproval of any New Lease or Lease Modification which requires Lender's approval following Lender's receipt of a complete and accurate copy of the New Lease or Lease Modification, as applicable, together with current financial statements for the Tenant thereunder and such other information regarding the New Lease or Lease Modification, as applicable, as Lender reasonably may request in order to enable Lender to make a reasonably informed decision with respect to the New Lease or Lease Modification. Borrower may enter into a New Lease or Lease Modification which requires Lender's approval prior to obtaining such approval, provided that the effectiveness of the New Lease or Lease Modification, as applicable, and the Borrower's obligations thereunder are expressly conditioned on Borrower obtaining Lender's written approval of such New Lease or Lease Modification.

2.24 **Financial Statements; Books and Records; Estoppel Certificates; Management.**

(a) **Financial Statements.** Within one hundred and twenty (120) days after the close of Borrower's fiscal year, Borrower shall deliver to Lender a balance sheet and a statement of profit and loss for Borrower for such fiscal year. Within one hundred and twenty (120) days after the close of the fiscal year for (a) each Guarantor; (b) each general partner of Borrower ("General Partner"), if Borrower is a partnership; and (c) each Manager of Borrower, if Borrower is a limited liability company, Borrower shall cause each such Guarantor, General Partner, and Manager to provide Lender with a balance sheet and a statement of profit and loss for such Guarantor, General Partner, and Manager for such fiscal year. Borrower shall cause all financial statements furnished to Lender under this Section to be certified by the party to whom such statements apply. If Borrower or any Guarantor, General Partner or Manager has audited financial statements prepared, Borrower shall cause a copy of such audited financial statements to be delivered to Lender within thirty (30) days after such statements are received by Borrower or the Person to whom such statements apply. Borrower and each Person whose financial statements are provided to Lender under this Section shall, by submitting such statements to Lender, be conclusively deemed to have certified to Lender, in addition to any other certifications contained in such statements, that the financial statements furnished to Lender (i) are accurate and complete in all material respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the statements apply as of the date and for the period shown in such statements; and (iii) disclose all material suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statements apply. Borrower shall provide Lender with such other information concerning the financial condition and affairs of Borrower, the Guarantors, the General Partners, and Managers as Lender may reasonably require within ten (10) business days after Lender's request for such information. Borrower shall deliver to Lender, or cause to be delivered to Lender, a complete and accurate copy of each federal income tax return filed by Borrower and any Guarantor, General Partner, and Manager within fifteen (15) days after the date on which each such return is filed

(b) **Operating Statements.** If the Property consists of a Commercial Project, within one hundred and twenty (120) days after the end of each calendar year, and within ten (10) business days after Lender's request from time to time, Borrower shall deliver to Lender an accurate and complete annual operating statement for the Property for the immediately preceding calendar year or twelve (12) month period, as applicable. All such operating statements shall be in a form reasonably acceptable to Lender and shall contain such detail as Lender may require to provide Lender with a complete and accurate statement of all income, receipts, payments, rents, reimbursements, deposits, and other revenues of every kind from the Property and all operating expenses of every kind paid or incurred with respect to the Property, including taxes, insurance, utilities, salaries, wages and personnel costs, leasing costs and commissions, maintenance and repair costs, legal and accounting fees and expenses, advertising and promotion costs, management fees, and expenditures for capital improvements. Each operating statement delivered by Borrower to Lender under this Section shall be signed by Borrower and shall be certified as being accurate and complete by Borrower. At any time after Lender's receipt of any of the operating statements described in this Section or in Section 2.24(e) below, within ten (10) business days after Lender's request, Borrower shall deliver to Lender copies of such invoices, bank statements, canceled checks, and other supporting documentation as Lender may designate to substantiate any or all matters reflected in the operating statements received by Lender.

(c) **Rental Statements.** If the Property consists of a Commercial Project, within ninety (90) days after the end of each calendar year, and within ten (10) business days after Lender's request from time to time, Borrower shall deliver to Lender an accurate and complete rent statement for the Property (the "Rent Statement") as of the last day of the most recent calendar month showing (i) the leasing status of all space in the Buildings, including information as to whether such space is vacant or subject to a Lease; and (ii) with respect to each space in the Buildings that has been leased, [A] the name of the Tenant renting the space; [B] the premises occupied by each of the Tenants; [C] the current monthly rent and all other amounts payable by such Tenant under such Lease; [D] the total amount of all prepaid rent received by Borrower from such Tenant; [E] the total amount of any security deposit or other deposit received by Borrower from such Tenant; [F] the expiration date of the term of such Lease or nature of the tenancy under such Lease; [G] the rent payment dates and the amount of any delinquent rent or other payments owing by such Tenant; [H] extension or renewal options under the Leases; [I] any rent or other concessions granted to, and any claims or offsets asserted by, any Tenants; and [J] such other information as Lender may designate. Each Rent Statement delivered by

Borrower to Lender under this Section or Section 2.24(e) below shall be signed by Borrower and shall be certified as being accurate and complete by Borrower.

(d) **Books and Records**. If the Property consists of a Commercial Project, Borrower shall keep and maintain complete and accurate Books and Records at Borrower's principal place of business, and Borrower shall not remove the Books and Records from such location without Lender's prior written consent. Lender shall have access to the Books and Records at all reasonable times upon reasonable prior notice [which shall not be less than three (3) business days] for the purposes of examination, inspection, verification, copying and for any other reasonable purpose. The Books and Records shall include a complete and accurate record of all costs incurred and payments made in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, and marketing of the Property. If (i) Borrower fails to provide Lender with any annual financial statement or income tax return, annual operating statement, or annual Rent Statement which Borrower is required to deliver to Lender under Sections 2.24(a), 2.24(b) and 2.24(c) above within the required time period; and (ii) Borrower fails to cure such failure within thirty (30) days after the date on which the latter of two separate written notices is given by Lender to Borrower (the second of which shall be given by Lender not sooner than ten (10) days after the date on which the first of such notices is given) notifying Borrower of such failure and of the fact that the default rate of interest under the terms of the Note will be imposed on Borrower if Borrower fails to cure the failure within the time provided by this Section, then interest on the unpaid principal balance of the Note shall accrue at the default rate of interest provided for in the Note from the end of such thirty (30) day period until the default is cured (regardless of whether or not Lender has elected to accelerate the unpaid principal balance of the Note as a result of such failure). Borrower agrees that the actual damages suffered by Lender because of any failure to deliver the information described in the immediately preceding sentence are extremely difficult and impracticable to ascertain, and the application of the default rate of interest described in this Section represents a reasonable attempt to fix such damages under the circumstances existing at the time this Deed of Trust is executed. Lender's acceptance of any interest at the default rate shall not constitute a waiver of any breach by Borrower of its obligation to provide the information required by Section 2.24 of this Deed of Trust or any of the other terms of the Loan Documents and shall not affect Lender's right to enforce any of its rights and remedies against Borrower or any other any Person under the Loan Documents

(e) **Additional Reports and Information**. If the Property consists of a Commercial Project, within ten (10) business days after Lender's request from time to time, Borrower shall deliver to Lender such additional information available to Borrower and reports as Lender may reasonably request concerning the Property and the business and affairs of Borrower or any Guarantor, General Partner, or Manager, including (i) a balance sheet and profit and loss statement for the most recent fiscal year and for the most recent fiscal year-to-date quarterly period or periods of Borrower or any Guarantor, General Partner, or Manager, each of which shall be certified and otherwise prepared in accordance with the requirements of Section 2.24(a) above; (ii) quarterly or monthly operating statements from Borrower for the Property for each calendar quarter or month containing the same detailed information required to be included in the operating statements described in Section 2.24(b) above; (iii) quarterly or monthly Rent Statements from Borrower for the Property for each calendar quarter or month containing the same detailed information required to be included in the Rent Statements described in Section 2.24(c) above; (iv) copies of all financial statements and reports that Borrower sends to its partners or shareholders, if any; (v) copies of all reports which are available for public inspection or which Borrower is required to file with any Governmental Authorities; (vi) a certificate executed by Borrower, dated within ten (10) business days of the date of delivery of such certificate to Lender, stating that Borrower knows of no Event of Default under the Loan Documents or, if an Event of Default exists, stating the nature of the default and what action Borrower has taken or proposes to take with respect to such Event of Default; (vii) complete and accurate as-built plans for all Buildings located on the Land, if to the extent such plans are in Borrower's possession or control; (viii) complete and accurate copies of all Leases and any currently effective letters of intent or proposals to lease all or part of the Property received or made by or behalf of Borrower; and (ix) the most recent years' federal income tax returns for Borrower or any Guarantor, General Partner, or Manager. All financial statements that are required to be provided to Lender under this Section 2.24 shall be on Lender's standard form of financial statement or on such other form as may be reasonably acceptable to Lender. Lender may exercise its rights to require additional reports and information under this Section at any time and from time to time on such periodic basis as Lender reasonably shall determine to be necessary or appropriate, including annual requests on the anniversary of the date of recordation of this Deed of Trust

(f) **Notice of Certain Matters**. Borrower shall promptly notify Lender in writing of (i) any claim, demand, right, or Lien relating to the Property which may be adverse to the lien of this Deed of Trust; (ii) any material loss, depreciation, or adverse change in the value of the Property and any other occurrence which may materially and adversely affect Lender's lien on the Property; (iii) any material adverse change in Borrower's ability to perform any or all of the Obligations; (iv) any event or condition which constitutes an Event of Default; and (v) any dispute between Borrower and any Governmental Authority relating to the Property which may have a material adverse effect on the Property.

(g) **Estoppel Certificates**. Within ten (10) business days after Lender's request, Borrower shall deliver to Lender a written statement signed and acknowledged by Borrower and certified by Borrower to be accurate stating (i) the original principal amount of the Note; (ii) the unpaid principal balance of the Note and the amount of all other monetary Obligations secured by this Deed of Trust; (iii) the rate of interest on the unpaid principal balance of the Note; (iv) the terms of payment and maturity dates of principal payable under the Note, (v) the date installments of interest, principal, or both principal and interest were last paid; (vi) that, except as specifically provided in such statement, there are no defaults by Borrower under the Loan Documents or events which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Loan Documents; (vii) that the Loan Documents are valid, legal and binding obligations of Borrower and have not been modified (or if modified, stating the specific terms of such modification); (viii) whether Borrower contends that any offsets or defenses exist against the Obligations secured by this Deed of Trust and whether Borrower has any claims of any kind against Lender and, if so, a detailed description of such offsets, defenses, and claims; (ix) that all Leases affecting the Property identified in a current Rent Statement are in full force and effect (or if any of such Leases is not in full force, stating the basis on which the Lease has been terminated or cancelled); (x) the date to which the rents have been paid pursuant to all Leases affecting the Property; (xi) whether or not, to the best of

Borrower's knowledge, any of the Tenants under the Leases affecting the Property are in default under such Leases and, if any of Tenants is in default, setting forth the specific nature of all such defaults; (xii) the amount of security deposits held by Borrower under each Lease affecting the Property and that such amount is consistent with the amounts required under each Lease; and (xiii) such other information with respect to the Obligations, the Loan Documents, the Property, or the Leases as Lender may reasonably require, including evidence acceptable to Lender of Borrower's compliance with any of the terms of the Loan Documents which are specifically identified in Lender's request. With respect to all statements, information and reports that Borrower submits to Lender pursuant to this Deed of Trust, including pursuant to this Section 2.24, Borrower shall be deemed conclusively to have certified to Lender, whether or not such statements, information or reports have been signed by Borrower, that [A] such statements, information and reports are accurate and complete in all material respects as of the date or for such periods as may be shown in the statements, information, and reports; and [B] such statements, information, and reports do not omit to state any facts or other information so as to make the statements, information, or reports submitted to Lender misleading in any material respect.

(h) **Management**. The Property shall be managed by either (a) Borrower or an entity affiliated with Borrower who has been approved by Lender, provided that the Lender determines that Borrower or such affiliated entity is at all times managing the Property in accordance with good quality and generally accepted management practices for properties similar to the Property; or (b) a professional property management company acceptable to Lender. If the Property is managed by an entity affiliated with Borrower or a professional property management company, such management shall be pursuant to a written management agreement acceptable to Lender.

2.25 **Inspection**. Lender shall have the right at all reasonable times (a) upon reasonable prior written or telephonic notice (except that no such notice shall be required in the case of an emergency or any inspection limited to the public areas or common areas of the Property) to enter upon and inspect the Property, including any entry which Lender determines is necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Lender under the Loan Documents; (b) to contact any Person to verify any information provided or disclosed by Borrower to Lender, and (c) to release such information regarding the Property, Borrower, or the Obligations as Lender may determine to be necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Lender under the Loan Documents. Without limiting any other provision of the Loan Documents, Borrower, for itself and on behalf of each Manager of Borrower, each General Partner of Borrower, and each Guarantor, as applicable, irrevocably authorizes Lender, without further notice to or approval of Borrower or any other Person, to request and obtain at any time and from time to time (whether before or after the closing of the Loan) any and all information and to make or have made any other investigative inquiries that Lender determines to be necessary or appropriate in connection with Lender's origination, closing, servicing, administration, modification, extension, renewal, transfer, or enforcement of the Loan or in connection with any of the transactions that are the subject of the Loan Documents, including (i) information bearing on the credit worthiness, credit standing, credit capacity, character, general reputation, experience, or expertise of Borrower, each Manager of Borrower, each General Partner of Borrower, and each Guarantor, respectively, as applicable; and (ii) credit reports and other reports from one or more credit reporting agencies or bureaus bearing on the credit worthiness, credit standing, credit capacity, character, general reputation, experience, or expertise of Borrower, each Manager of Borrower, each General Partner of Borrower, and each Guarantor, respectively, as applicable. Lender shall have no obligation or duty to inspect the Property or the Books and Records, and all such inspections by Lender shall be for Lender's sole benefit and not for the benefit of Borrower or any other Person Lender shall have no obligation or duty to inspect the Property or the Books and Records, and all such inspections by Lender shall be for Lender's sole benefit and not for the benefit of Borrower or any other Person.

2.26 **Defense of Actions and Protection of Security by Borrower**. Borrower shall appear in and defend any action or proceeding commenced by any Person other than Lender which affects or which Lender determines may affect any or all of the following. (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Lender's, Trustee's or Borrower's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Lender by reason of its interest in the Property. Borrower shall promptly commence and diligently prosecute all actions and proceedings which are necessary or appropriate or which Lender determines may be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds; or (iii) to preserve, protect, maintain, and defend the Property and Lender's lien thereon.

2.27 **Leasehold Estates**. The following provisions in this Section 2.27 shall apply only if this Deed of Trust encumbers a Ground Lease:

(a) **Borrower's Obligations under Ground Lease**. If this Deed of Trust encumbers a Ground Lease, Borrower (i) shall perform all obligations of the tenant under the Ground Lease and shall not permit or suffer any default by Borrower under the terms of the Ground Lease; (ii) shall not amend, modify, terminate, cancel, or surrender its interest in the Ground Lease without Lender's prior written consent; (iii) shall give immediate written notice to Lender of [1] any default by the landlord under the Ground Lease (the "Lessor"); [2] any notice received by Borrower from the Lessor of any default by Borrower under the Ground Lease; and [3] any other default by Borrower under the Ground Lease of which Borrower is aware, and (iv) shall furnish to Lender all information which Lender may require regarding Borrower's performance under the Ground Lease.

(b) **Leasehold Estate**. Whenever the context of this Deed of Trust so requires, the term Property shall be deemed to include the leasehold estate under the Ground Lease and any other interest of Borrower in the real property which is the subject of the Ground Lease.

(c) **Acquisition of Title**. If Borrower shall, directly or indirectly, acquire fee title or any other estate or interest in the real property which is the subject of the Ground Lease, this Deed of Trust shall attach to and encumber such fee title or other estate or interest without further action by Borrower, Trustee or Lender.

(d) **No Merger**. There shall be no merger of the leasehold estate arising under the Ground Lease with all or any portion of the fee estate in the real property which is the subject of the Ground Lease by reason of the fact that such leasehold estate may be held by any Person who shall hold all or any portion of such fee estate in the real property which is the subject of the Ground Lease, unless Lender shall expressly agree otherwise in writing.

(e) **Cure Rights**. If Borrower fails to perform any of its obligations as tenant under the Ground Lease, Lender shall have the right to pay or perform any or all of such obligations in such manner and to such extent as Lender determines to be necessary or appropriate to preserve or protect the security for the Obligations. All costs and expenses, including without limitation attorneys' fees, incurred by Lender in connection with the payment or performance of such obligations shall be payable by Borrower to Lender on Lender's demand, shall bear interest at the rate specified in the Note from the date of expenditure, and shall be deemed to be secured by this Deed of Trust and all other agreements given by Borrower to secure the Note. Nothing contained in this Deed of Trust shall be construed to obligate Lender to pay or perform any of Borrower's obligations under the Ground Lease, and no election by Lender to pay or perform such obligations shall constitute a waiver of any default by Borrower under this Deed of Trust

2.28 Enforcement of Covenants and Restrictions. If any of the Covenants and Restrictions apply to Persons owning or occupying real property which is adjacent to or in the vicinity of the Property, Borrower shall diligently enforce the Covenants and Restrictions against such Persons if (a) such Persons have breached their obligations under the Covenants and Restrictions; and (b) such breach has not been cured by such Persons within ninety (90) days after a request by Lender to Borrower to enforce the Covenants and Restrictions.

2.29 Further Assurances. Upon Lender's request, Borrower shall execute, acknowledge and deliver to Lender such further documents and agreements and take such further actions as Lender may reasonably require from time to time to effectuate or carry out the purposes of the Loan Documents or to evidence, perfect, maintain, preserve or protect Lender's lien on the Property, including Borrower's execution of security agreements, assignments, financing statements, and continuation financing statements. Upon Lender's request, Borrower shall execute, acknowledge and deliver to Lender an assignment acceptable to Lender of such additional rights, privileges, Governmental Permits, and documents relating to the Property as Lender may reasonably determine to be necessary or appropriate in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

ARTICLE 3

EVENTS OF DEFAULT

Lender, at its option, shall have the right to declare Borrower to be in default under this Deed of Trust and the other Loan Documents upon the occurrence of any or all of the following events:

3.1 Payment of Note and Other Monetary Obligations Under Loan Documents. If Borrower fails to pay any of its indebtedness under the Note or perform any of its other obligations under the Loan Documents requiring the payment of money to Lender or any third Person within fifteen (15) days after the date on which the Lender has given written notice to Borrower that such indebtedness or monetary obligation is due; provided, however, that notwithstanding anything to the contrary contained in this Section, (a) the fifteen (15) day grace period contained in this Section 3.1 shall not apply to Borrower's obligation to pay the regularly scheduled quarterly interest installment payments that are due under the Note on each of the applicable installment payment dates specified in the Note; and (b) the fifteen (15) day grace period contained in this Section 3.1 shall not apply to Borrower's obligation to pay the outstanding principal balance and all accrued but unpaid interest under the Note on each of the applicable Stated Loan Advance Original Maturity Dates specified in the Note;

3.2 Performance of Non-Monetary Obligations Under Other Loan Documents. If (a) Borrower fails to perform any of its non-monetary obligations to Lender or any third Person under any of the Loan Documents when due; and (b) Borrower fails to diligently complete a cure of its breach of such non-monetary obligation as soon as reasonably practicable after written notice by Lender to Borrower setting forth such non-monetary breach, but in any event within thirty (30) days after such notice is given, provided, however, that notwithstanding anything to the contrary contained in this Section, the notice and thirty (30) day cure period contained in this Section 3.2 shall not be deemed to apply to any of the following circumstances: (i) if Borrower commits more than two (2) non-monetary breaches within any twelve (12) calendar month period; and (ii) if the non-monetary breach by Borrower is not reasonably susceptible to being cured by Borrower. Without limiting the generality of this Section, a non-monetary obligation shall not include any of Borrower's obligations to make payments of principal, interest, or other amounts under the terms of the Note or any of the other Loan Documents. Without limiting any of the terms of this Section 3.2, the cure provision contained in this Section 3.2 (the "Cure Provision") shall not apply with respect to any violation of Section 2.15 of this Deed of Trust. Notwithstanding anything to the contrary contained in this Section 3.2 or Section 3.1 above, if Borrower breaches any of the terms of the Loan Documents, and if Lender, in its good faith business judgment, determines that such breach impairs or may impair Lender's security for the Loan (which determination shall be binding and conclusive on Borrower), Lender, immediately upon the occurrence of any such breach, shall have the right to take such actions and exercise such remedies under the Loan Documents as Lender may in good faith determine to be necessary or appropriate to avoid such impairment. The immediately preceding sentence is specifically intended, among other things, to grant Lender the right to immediately obtain fire and extended coverage and other

forms of insurance with respect to the Property if Borrower fails to obtain or maintain any such insurance in effect in accordance with the terms of the Loan Documents, notwithstanding the existence of the Cure Provision or any other cure period in favor of Borrower;

3.3 **Other Agreements with Lender.** If Borrower fails to pay any of its indebtedness or to perform any of its obligations under any note, agreement, loan agreement, credit agreement or facility, or other document between the Borrower and Lender (other than the Loan Documents) when due and fails to cure such breach within any applicable cure period expressly provided for in such documents;

3.4 **Misrepresentation.** If any request, statement, information, certification, or representation, whether written or oral, submitted or made by Borrower to Lender in connection with the Loan or any other extension of credit by Lender to Borrower is false or misleading in any material respect as of the date made;

3.5 **Insolvency of Borrower.** If (a) a petition is filed by or against Borrower under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency or similar law; (b) a receiver, liquidator, Trustee, custodian, sequestrator, or other similar official is appointed to take possession of Borrower or the Property, or Borrower consents to such appointment; (c) Borrower makes an assignment for the benefit of creditors; (d) Borrower takes any action in furtherance of any of the foregoing; or (e) there is a material adverse change in Borrower's financial condition as represented to Lender in connection with Lender's approval of the Loan and Lender reasonably determines that such change materially impairs Borrower's ability to perform any or all of the Obligations; provided, however, that Borrower shall have sixty (60) days within which to cause any involuntary bankruptcy proceeding to be dismissed or the involuntary appointment of any receiver, liquidator, Trustee, custodian, or sequestrator to be discharged. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure provisions contained in the Loan Documents;

3.6 **Insolvency of Other Persons.** If any of the events specified in parts (a) through (e) of Section 3.5 above occurs with respect to (a) any General Partner of Borrower, if Borrower is a partnership; (b) any of the Guarantors; or (c) any Manager of Borrower, if Borrower is a limited liability company;

3.7 **Performance of Obligations to Senior Lien Holders.** If Borrower fails to pay any of its indebtedness or to perform any of its obligations under any agreement between Borrower and any other Person who holds a Lien senior to this Deed of Trust when due, provided Lender determines in good faith that such failure has an actual or potential material adverse effect on the Property or Borrower's ability to perform any or all of the Obligations Nothing contained in this Section constitutes or shall be construed as Lender's consent to any Lien being placed on the Property which is senior to the lien of this Deed of Trust, except as otherwise expressly provided in the Loan Documents;

3.8 **Attachment.** If all or any material part of the assets of Borrower, any of the Guarantors, or any General Partner or Manager of Borrower are attached, seized, subjected to a writ or levied upon by any court process and Borrower fails to cause such attachment, seizure, writ or levy to be fully released or removed within sixty (60) days after the occurrence of such event. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

3.9 **Injunctions.** If a court order is entered against Borrower, any of the Guarantors, or any General Partner or Manager of Borrower enjoining the conduct of all or part of such Person's business and Borrower fails to cause such injunction to be fully stayed, dissolved or removed within sixty (60) days after such order is entered. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

3.10 **Dissolution.** If Borrower, any of the Guarantors, or any General Partner or Manager of Borrower is a corporation, partnership, limited liability company or trust, the dissolution, liquidation, or termination of existence of such Person;

3.11 **Transfers of Partnership Interests.** If Borrower is a partnership (a) the admission, withdrawal, death, retirement, or removal of any General Partner of Borrower; (b) the sale or transfer of an aggregate of more than ten percent (10%) of the beneficial interests in Borrower; or (c) Lender's receipt of any conflicting written instructions or written demands relating to the Loan from any partners of Borrower which Lender reasonably determines have a material adverse affect on Lender's ability to service or administer the Loan;

3.12 **Transfers of Corporate Ownership.** If Borrower is a corporation, the sale or transfer of an aggregate of more than ten percent (10%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust;

3.13 **Transfer of Manager's Interests.** If Borrower is a limited liability company, (a) the appointment, withdrawal, death, retirement or removal of any Manager of Borrower; (b) the sale or transfer of an aggregate of more than ten percent (10%) of the beneficial interests of Borrower; or (c) Lender's receipt of any conflicting written instructions or written demands relating to the Loan from any members of Borrower which Lender reasonably determines have a material adverse affect on Lender's ability to service or administer the Loan;

3.14 **Death; Incompetency.** If Borrower, any of the Guarantors, or any General Partner or Manager of Borrower is an individual, the death or incompetency of such Person, except where Governmental Requirements limits or prohibits Lender's

declaration of a default based on such occurrences; provided, however, that Lender shall not declare an Event of Default to exist based solely on the death or mental incompetence of any individual Guarantor, General Partner, or Manager if, within ninety (90) days after the occurrence of such event, (a) in the case of the death or mental incompetence of a Guarantor, Borrower causes a substitute guarantor to execute and deliver to Lender a continuing guaranty in the form previously executed by the affected Guarantor, and Lender in good faith determines that such substitute guarantor's financial condition is comparable to that of the affected Guarantor and that such substitute Guarantor is otherwise reasonably acceptable to Lender; and (b) in the case of the death or mental incompetence of a General Partner or Manager, Borrower causes a substitute general partner or manager, as applicable, to be admitted to Borrower or appointed, and Lender in good faith determines that the financial condition, credit history, character, experience, ability and expertise of such substitute general partner or manager are comparable to the affected General Partner or Manager and that such substitute general partner or manager is otherwise acceptable to Lender;

3.15 **Impairment of Lien Priority; Impairment of Value of Property.** If (i) the priority of this Deed of Trust or Lender's security interest under any of the other agreements securing any or all of the Obligations is impaired for any reason, except for the encumbrance of the Property by the Senior Construction Deed of Trust and other Senior Loan Documents as expressly permitted by the terms and provisions of this Deed of Trust or the other Loan Documents, or (ii) the value of the Property has deteriorated, declined or depreciated as a result of any intentional tortious act or omission by Borrower,

3.16 **Condemnation.** If all or any material part of the Property is transferred to any Governmental Authority as a result of any condemnation proceeding or action with respect to all or any material part of the Property;

3.17 **Failure to Repair Casualty.** If there is an uninsured casualty with respect to the Property, and Borrower (a) fails to commence repairs and reconstruction of the Property within ninety (90) days after such damage; or (b) thereafter fails to diligently prosecute such repairs and reconstruction to completion;

3.18 **Transfers of Property.** If any of the events described in Section 2.15 above occurs without Lender's prior written consent;

3.19 **Material Adverse Change.** A Material Adverse Change shall have occurred;

3.20 **Default by Guarantors.** If any Guarantor fails to perform any of its independent obligations under any of the Guaranties (other than such Guarantor's guaranty of Borrower's Obligations) when due or the revocation, limitation or termination or attempted revocation, limitation or termination of any of the obligations of any Guarantor under any of the Guaranties, except in accordance with the express written terms of the Guaranties;

3.21 **Misrepresentation by Guarantors.** If any written request, statement, information, certification, or representation submitted or made by any Guarantor to Lender in connection with the Loan or any other extension of credit by Lender to Borrower or such Guarantor is false or misleading in any material respect, or

3.22 **Default by Affiliate.** If any Affiliate (a) fails to pay any of its indebtedness or to perform any of its obligations under any document between such Affiliate and Lender when due, and (b) such Affiliate fails to diligently complete a cure of its breach of such obligation within the applicable cure period, if any, provided for in such document.

ARTICLE 4

REMEDIES

Upon Lender's election to declare Borrower to be in default under this Deed of Trust and the other Loan Documents pursuant to Article 3 above, Borrower shall be deemed to be in default under this Deed of Trust and the other Loan Documents, and Lender shall have the following rights and remedies:

4.1 **Acceleration.** Lender shall have the right to declare any or all of the Obligations to be immediately due and payable, including the entire principal amount and all accrued but unpaid interest under the Note and all Future Advances, and notwithstanding the stated maturity dates set forth in the Note or any Future Advances, such Obligations shall thereupon be immediately due and payable.

4.2 **Entry by Lender.** Whether or not Lender elects to accelerate any or all of the Obligations under Section 4.1 above, Lender shall have the right (a) to enter, take possession of, and manage, operate and lease the Property; (b) to take possession of any or all Books and Records; (c) to collect any or all Rents and Profits, whether or not Lender has taken possession of the Property; and (d) to take any or all actions which Lender determines to be necessary or appropriate in connection therewith or to preserve, protect, maintain and defend the Property and Lender's lien thereon, including (i) the exercise and enforcement of all of Borrower's rights under any or all of the Leases; (ii) the termination, acceptance of a surrender, modification or amendment of any or all of the Leases; (iii) the execution of new Leases on such terms and conditions as Lender determines to be appropriate; and (iv) the repair, alteration, improvement or completion of the Property in such manner and to such extent as Lender determines to be necessary or appropriate. If Lender elects to take possession of the Property or to take any or all of the other actions described in this Section by court process, Borrower irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose pursuant to Section 4.6 below.

4.3 **Judicial Action**. Lender shall have the right to commence an action or proceeding to foreclose this Deed of Trust and to enforce any or all of the terms of the Loan Documents, including specific performance of the covenants of Borrower under this Deed of Trust

4.4 **Foreclosure by Power of Sale**.

(a) **Declaration and Notice of Default**. Lender shall have the right (i) to cause the Property to be sold under the power of sale contained in this Deed of Trust in any manner permitted by Governmental Requirements; and (ii) to deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause the Property to be sold, which notice the Trustee or Lender shall cause to be recorded as required by law. Upon the expiration of such period of time after the recordation of such notice of default and election to sell and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Borrower, Trustee, at the time and place specified in the notice of sale, shall sell the Property at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale.

(b) **Postponements; Multiple Parcels**. To the extent permitted by law, Trustee may, and upon request of Lender shall, from time to time, postpone any sale hereunder by public announcement at the time and place noticed for such sale or may, in its discretion, give a new notice of sale. If the Property consists of several lots, parcels or items of property, Lender shall have the exclusive right (i) to designate the order in which such lots, parcels or items shall be offered for sale or sold; and (ii) to elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner Lender determines to be in its best interest. Any Person, including Borrower, Trustee and Lender, may purchase at any sale under this Deed of Trust, and Lender shall have the right to purchase at any such sale by crediting upon the bid price the amount of all or any part of the Obligations. If Lender determines to sell the Property in more than one sale, Lender may, at its option, cause such sales of the Property to be conducted simultaneously or successively, on the same day or on such different days or times and in such order as Lender may determine, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property that has not been sold until all Obligations have been paid in full.

(c) **Costs of Sale; Deed to Purchaser**. Borrower shall pay all costs, fees, and expenses of all sales of the Property under this Deed of Trust, including the costs, fees, and expenses (including attorneys' fees) of Trustee and Lender, together with interest thereon at the interest rate applicable to principal under the Note or, with respect to Trustee, the maximum rate permitted by law to be charged by Trustee. Upon any sale under the power of sale contained in this Deed of Trust, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied. The recitals in any such deed or deeds of any matter or facts, including the existence of any default by Borrower, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or sales, shall be conclusive proof of the truth of such facts and matters, and any such deed or deeds shall be conclusive against all Persons as to such facts and matters recited therein. A sale of less than all of the Property or any defective or irregular sale under this Deed of Trust shall not exhaust, impair or otherwise affect the power of sale contained in this Deed of Trust, and subsequent sales of the Property may be made under this Deed of Trust until all Obligations have been satisfied or until the entire Property has been sold without defect or irregularity If Lender elects to cause the Property to be sold under the power of sale contained in this Deed of Trust, Lender shall deposit with the Trustee this Deed of Trust, the Note, and such receipts and evidence of such other Obligations as Trustee may reasonably require.

4.5 **Application of Sale Proceeds**. Trustee shall apply the proceeds of the sale or sales conducted by Trustee in the following order of priority: (a) first, to payment of all expenses of such sale or sales and all costs, expenses, fees, and liabilities of Trustee and this trust, including attorneys' fees, costs of a Trustee's sale guaranty, costs of other evidence of title, and Trustee's fees in connection with such sale or sales; (b) second, to all amounts advanced by Trustee or Lender under any of the terms of this Deed of Trust which have not then been repaid, together with interest thereon at the rate applicable to principal under the Note or, with respect to Trustee, the maximum rate permitted by law to be charged by Trustee; (c) third, to the payment of all other Obligations in such order and amounts as Lender determines, and (d) the remainder, if any, to the Person or Persons legally entitled thereto.

4.6 **Appointment of a Receiver**. Lender shall have the absolute and unconditional right to apply to any court having jurisdiction and obtain the appointment of a receiver or receivers of the Property, and Borrower irrevocably and unconditionally consents to such appointment and agrees that Lender shall have the right to obtain such appointment (a) without notice to Borrower or any other Person; (b) without regard to the value of the Property or any other collateral securing the Obligations; and (c) without acceleration of the Obligations or commencement of foreclosure proceedings under this Deed of Trust Any such receiver or receivers shall have the usual powers and duties of receivers in similar cases and all powers and duties necessary or appropriate to exercise the rights of Lender as provided in this Deed of Trust.

4.7 **Protection of Lender's Security**. Lender or Trustee, without obligation to do so and without notice to or demand on Borrower, and without releasing Borrower from any of its Obligations or waiving Lender's rights under the Loan Documents, shall have the right to perform any Obligation which Borrower has breached in such manner, at such time, and to such extent as Lender or Trustee determines to be necessary or appropriate to preserve, protect, maintain and defend the Property and Lender's lien thereon.

4.8 **Assembly of Property**. Upon Lender's request, Borrower shall assemble and make available to Lender at the location of the Land all Property which has been removed from or which is not located on the Land.

4.9 **Discontinuation of Disbursements Under Loan and Advances under Other Extensions of Credit**. Lender shall have the (a) right to discontinue or withhold any or all disbursements of the proceeds of the Loan and any Future Advances; and (b) to discontinue advancing money or extending credit to or for the benefit of Borrower in connection with any other document between Lender and Borrower.

4.10 **Rescission of Notice of Default**. Prior to the conduct of any sale under the power of sale contained in this Deed of Trust, Lender, at its option, shall have the right to rescind any notice of default and election to sell the Property by delivering to Trustee a written notice of rescission executed by Lender which, when recorded, shall cancel the foreclosure proceedings which have been commenced by the recordation of such notice of default and election to sell. Lender's rescission of any notice of default and election to sell pursuant to this Section or under Governmental Requirements shall not constitute or be construed as a waiver of any Event of Default or impair, prejudice or otherwise affect (a) Lender's right to record a new notice of default and election to sell the Property based on the same or any other Event of Default; or (b) Lender's rights and remedies in connection with the Obligations.

4.11 **Easements**. Without limiting the effect of any right or remedy exercised by Lender under the Loan Documents, any Easements granted by Borrower or other agreement made by Borrower in violation of any of the terms of this Deed of Trust shall, at the option of any purchaser at any judicial or nonjudicial foreclosure sale under this Deed of Trust, be voidable, and any such purchaser shall have the right to take possession of the Property free from the terms of such Easement or agreement.

4.12 **Exercise of Rights Under Other Loan Documents**. Lender shall have the right to exercise any or all rights and remedies which Lender may have under any or all of the other Loan Documents and Governmental Requirements.

ARTICLE 5

WARRANTIES AND REPRESENTATIONS

5.1 **Warranties and Representations**. As a material inducement to Lender's extension of credit to Borrower in connection with the Loan, Borrower warrants and represents to Lender as follows:

(a) **Corporate Existence**. If Borrower is a corporation, Borrower is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and Borrower is qualified to do business and is in good standing under the laws of the state in which the Property is located.

(b) **Partnership or Limited Liability Company Existence**. If Borrower is a partnership or limited liability company, Borrower is duly organized, validly existing and in good standing under the laws of the state in which Borrower is organized, and Borrower is qualified to do business and is in good standing under the laws of the state in which the Property is located.

(c) **Existence of Trust**. If Borrower is a trust, Borrower is duly organized and validly existing, and the Trustees of Borrower are qualified to act in such capacity.

(d) **Authority**. Borrower has the full power and authority to carry on its business and to enter into and perform all of its obligations under the Loan Documents, and the Loan Documents, when executed by the Persons signing this Deed of Trust on behalf of Borrower, shall constitute legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms. The Persons executing this Deed of Trust on behalf of Borrower are duly authorized to execute the Loan Documents and all other documents required by Lender in connection with the Loan on behalf of Borrower. No consent of any other Person and no consent, approval, authorization or other action by or filing with any Governmental Authorities is required in connection with the execution, delivery and performance of Borrower's obligations under the Loan Documents.

(e) **No Violations**. The consummation of the transactions contemplated by the Loan Documents and the performance of Borrower's obligations thereunder will not result in a breach or violation of (i) any Governmental Requirements of any Governmental Authorities or any judgment, writ, injunction, decree or order of any court relating to Borrower or the Property; (ii) any mortgage, agreement, commitment, restriction, or other document to which Borrower is a party or by which Borrower or the Property is bound; (iii) Borrower's agreement or certificate of limited partnership, if Borrower is a limited partnership; (iv) Borrower's agreement or statement of partnership, if Borrower is a general partnership; (v) Borrower's articles of incorporation or bylaws, if Borrower is a corporation; (vi) Borrower's trust agreement, if Borrower is a trust; or (vii) Borrower's articles of organization or operating agreement, if Borrower is a limited liability company.

(f) **Utilities**. All utility services necessary for the use and occupancy of the Property, including water, storm drains, sewers, gas, electric and telephone facilities, are either available at the boundaries of the Land or, if this Deed of Trust secures a construction loan, Borrower has taken all necessary steps to assure that all such utility services will be available upon completion of the Improvements.

(g) **Access**. All public streets and rights of way necessary for the use and occupancy of the Property have been completed or, if this Deed of Trust secures a construction loan, Borrower has taken all necessary steps to assure that such public streets and rights of way shall be completed upon completion of the Improvements.

(h) **Governmental Restrictions**. To the best of Borrower's knowledge, there are no conditions or restrictions affecting the use or development of the Property and no agreements or contracts with any Governmental Authorities, including local, regional, state, or federal governmental authorities, affecting the use or development of the Property which have not been disclosed in writing by Borrower to Lender

(i) **Litigation**. To the best of Borrower's knowledge, there are no actions, suits, proceedings or investigations pending or threatened against or affecting Borrower or the Property in any court or before any other Governmental Authorities, nor does Borrower know of any basis for any such action, suit, proceeding or investigation.

(j) **Ownership**. Upon recordation of this Deed of Trust, Borrower will be the sole legal and beneficial owner of, and will have good and marketable title to, the Property and all other collateral which is the subject of the Loan Documents

(k) **Liens**. To the best of Borrower's knowledge, there are no Liens, claims, encroachments, Covenants and Restrictions, Leases, Easements, or other rights affecting the Property which would not be disclosed by a customary search of the records relating to the Land of the county recorder for the county in which the Property is located, except for such matters as have been specifically disclosed by Borrower to and approved in writing by Lender prior to the date of recordation of this Deed of Trust.

(l) **Condemnation**. To the best of Borrower's knowledge, there is no condemnation, zoning change, or other proceeding or action pending, threatened or contemplated by any Governmental Authority which would in any way affect the Property.

(m) **Repair Orders**. To the best of Borrower's knowledge, no orders or directives have been issued by any Governmental Authorities requiring that any work of repair, maintenance or improvement be performed with respect to the Property.

(n) **Transfers**. Borrower has not sold, transferred, leased or encumbered the Property or entered into any agreement for the sale, transfer, lease or encumbrance of the Property, except as described in the Loan Documents.

(o) **No Affiliation With Tenants**. Neither (i) Borrower; (ii) any General Partner or Manager of Borrower, if Borrower is a partnership or limited liability company, (iii) any shareholder in Borrower, if Borrower is a corporation; or (iv) any Guarantors have any direct or indirect financial or other interest in any Tenant, except for such interests as have been specifically disclosed to and approved in writing by Lender prior to the date of recordation of this Deed of Trust.

(p) **Financial Statements**. All statements respecting the financial condition of Borrower, any General Partner or Manager of Borrower, and any Guarantors which have been furnished to Lender (i) are accurate and complete in all material respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the financial statement applies as of the dates and for the periods shown on such statements; and (iii) disclose all suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statement applies. Since the last date covered by such financial statements, there has been no material adverse change in the financial condition of the Persons to whom such statements apply.

(q) **Other Financing**. As of the date of recordation of this Deed of Trust, no other financing for the Property will be in effect or encumber the Property, except such subordinate financing as has been specifically disclosed to and approved in writing by Lender prior to the date of recordation of this Deed of Trust.

(r) **Commissions**. Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other similar sum in connection with the consummation of the transactions contemplated by the Loan Documents, except for such commissions as have been specifically disclosed to and approved in writing by Lender prior to the date of recordation of this Deed of Trust

5.2 **Continuing Warranties and Representations**. The warranties and representations contained in this Article 5 shall be true and correct as of the date of recordation of this Deed of Trust, shall survive the closing of the Loan, and shall remain true and correct as of the date on which such warranties and representations are given. For purposes of this Deed of Trust, the term "to the best of Borrower's knowledge" shall be deemed to the best knowledge of Borrower after a commercially reasonable and diligent investigation, inspection and inquiry by Borrower.

ARTICLE 6

MISCELLANEOUS

6.1 **Lender Statement; Certain Charges**. With respect to (a) any statement, accounting, or similar information requested by Borrower or any other Person pursuant to California Civil Code Section 2943 or 2954 or any other provision of Governmental Requirements; or (b) any other document furnished to Borrower or any other Person by Lender at Borrower's request, Lender shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Lender's

customary charge for providing such statement, accounting, or other information. Borrower shall pay Lender its customary charge for any other service rendered by Lender in connection with the Loan or the Property, including the issuance of a request for full or partial reconveyance of this Deed of Trust, transmitting Loan proceeds to an escrow holder and changing Lender's records relating to the Obligations.

6.2 **Reconveyance.** Upon (a) Lender's written request stating that all Obligations secured by this Deed of Trust have been paid or performed in full; (b) surrender to Trustee of this Deed of Trust, the Note and all other documents evidencing the indebtedness secured by this Deed of Trust, and (c) payment of Trustee's fees and expenses of this trust, Trustee shall reconvey the Property then held under this Deed of Trust without warranty of any kind. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as the "person or persons legally entitled thereto". Such reconveyance shall operate as a reassignment of the Rents and Profits assigned to Lender under this Deed of Trust. Unless Trustee is directed by Lender to retain such documents for a longer period of time, Trustee may destroy this Deed of Trust and the Note five (5) years after issuance of the full reconveyance; provided, however, that Trustee, in its sole discretion, may deliver this Deed of Trust and the Note after full reconveyance to the Person or Persons legally entitled thereto.

6.3 **Substitution of Trustee.** Lender, at its option, shall have the right from time to time to appoint a successor Trustee to any Trustee appointed under this Deed of Trust by Lender's execution and acknowledgment of a written instrument which is recorded in the office of the recorder of each county in which the Property is located. The recordation of such an instrument in accordance with this Section shall constitute conclusive proof of the proper substitution of a successor Trustee under this Deed of Trust. Upon recordation of such an instrument, the successor Trustee shall succeed to all the title, power and duties granted to the Trustee under this Deed of Trust and by Governmental Requirements without conveyance of the Property. Such instrument shall contain the name of the original Lender, Trustee and Borrower named in this Deed of Trust, the book and page or other recording information for this Deed of Trust, and the name and address of the successor Trustee. If a notice of default has been recorded prior to the recordation of a substitution of Trustee, the power of substitution shall not be exercised by Lender until the costs, fees and expenses of the acting Trustee have been paid in full and the acting Trustee has endorsed acknowledgment of receipt of such amounts on the instrument substituting the successor Trustee. Without limiting the terms of this Section, Lender shall have the right from time to time to substitute a successor to any Trustee appointed under this Deed of Trust in accordance with any statutory or other procedure allowed by law for such substitution.

6.4 **Execution of Instruments by Lender and Trustee.** Without notice to or affecting the liability of Borrower or any other Person for the payment or performance of the Obligations, without affecting the lien or priority of this Deed of Trust or Lender's rights and remedies under the Loan Documents, and without liability to Borrower or any other Person, Lender and Trustee (if Trustee is so requested in writing by Lender) shall have the right, at any time and from time to time, to do any one or more of the following: (a) reconvey any part of the Property; (b) consent in writing to the making of any map or plat relating to the Property; (c) join in or consent to the granting of any Easement affecting the Property; and (d) execute any extension agreement relating to any or all of the Obligations, any document subordinating the lien of this Deed of Trust to any other Lien or document, or any other document relating to the Property, Obligations, or Loan Documents.

6.5 **Trust Irrevocable; Acceptance by Trustee.** The trust created by this Deed of Trust is irrevocable by Borrower Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is recorded in the county in which the Property is located as provided by law. Trustee is not obligated to notify any party of a pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender or the Trustee shall be a party unless brought by the Trustee.

6.6 **Late Charges.** If any installment payment under the Note or any note evidencing a Future Advance is not paid when due, Borrower shall pay any late charge provided for in the Loan Documents.

6.7 **Requests by Borrower for Approvals by Lender.** All requests by Borrower for Lender's consent to or approval of any transaction or matter requiring Lender's consent or approval under the Loan Documents (a) shall be made by Borrower in writing; (b) shall specifically describe the transaction or matter with respect to which Lender's consent or approval is requested; (c) shall be accompanied by such information and documentation as Lender may require in connection with such request; and (d) shall be delivered to Lender not less than fifteen (15) days before Borrower proposes to take the action or effect the transaction with respect to which Lender's consent or approval is requested, unless a different period of time is expressly provided for in the Loan Documents.

6.8 **Approvals by Lender.** Whenever (a) the terms of the Loan Documents grant Lender the right to consent to or approve any transaction or matter; (b) Lender is authorized or empowered under the Loan Documents to make a determination with respect to any transaction or matter; or (c) the Loan Documents provide that any document or other item must be approved by or acceptable to Lender, then except as otherwise expressly provided in the Loan Documents, (i) Lender shall have the right to grant or withhold such approval or consent and make such determination in its sole and absolute discretion, and (ii) the form and substance of such document or other item must be satisfactory to Lender in its sole and absolute discretion. Whenever the terms of the Loan Documents require Lender's consent to or approval of any transaction, matter, or document, such consent or approval shall not be deemed to be effective unless it is set forth in a written instrument executed by Lender.

6.9 **Transfers by Borrower Without Lender's Consent; No Release of Borrower.** The following provisions shall apply if Borrower sells the Property to a third Person either (i) without Lender's consent; or (ii) with Lender's consent in a transaction in which Borrower is not released from liability under the Loan Documents.

(a) **No Release of Borrower.** No such action by Borrower nor any assumption of any or all of the Obligations by any transferee of the Property ("Transferee") shall be deemed to release Borrower or any other Person, including any Guarantor, from any liability under the terms of the Loan Documents, and Borrower and such Persons shall remain liable to Lender for the payment and performance of all of their respective obligations under the Loan Documents.

(b) **Actions Without Borrower's Consent.** Borrower agrees that Lender may do any one or all of the following without notice to or the consent of Borrower and without affecting Lender's rights or remedies against Borrower: (i) accelerate, accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Borrower's Obligations to Lender under or in connection with this Deed of Trust or any of the other Loan Documents; (ii) grant any indulgence or forbearance to the Transferee or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute or add any or all collateral securing payment of any or all of the Obligations; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Obligations; (v) amend, supplement, alter or change in any respect whatsoever any term or provision of the Loan Documents or any other agreement relating to the Obligations; and (vi) exercise any right or remedy with respect to the Obligations or any collateral securing the Obligations, notwithstanding any effect on or impairment of Borrower's subrogation, reimbursement or other rights against the Transferee, whether by operation of California Code of Civil Procedures Section 580d or otherwise.

(c) **Waivers.** Borrower waives all rights which it may have (i) to require Lender to exhaust its rights and remedies against the Transferee, any other Person, or any collateral securing any or all of the Obligations before pursuing its rights and remedies against Borrower; (ii) to require Lender to exercise any right or power or to pursue any remedy which Lender may have under the Loan Documents or Governmental Requirements before pursuing its rights and remedies against Borrower; and (iii) to assert any defense to Lender's enforcement of its rights and remedies against Borrower based on an election of remedies by Lender or the manner in which Lender exercises any remedy which destroys, diminishes or interferes with any or all of Borrower's subrogation, reimbursement or other rights against the Transferee, whether by operation of California Code of Civil Procedure Section 580d or otherwise.

6.10 Taxes Imposed on Lender. If, after the date of this Deed of Trust, any Governmental Requirements are enacted for the purpose of taxing any lien on the Property or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust, so as to impose on Lender payment of all or part of any Taxes assessed against the Property, then prior to the due date of such Taxes, Borrower shall pay all such Taxes and agree to pay such Taxes when levied or assessed against the Property or Lender; provided, however, that if such payment or agreement by Borrower shall not be permitted by law, Lender, at its option, shall have the right to declare any or all of the Obligations to be immediately due and payable upon notice to Borrower. Nothing contained in this Section shall be deemed to require Borrower to pay any franchise, estate, inheritance, income or similar tax imposed on Lender.

6.11 Recourse Against Separate Property. Each Borrower who is a married person agrees that Lender shall have the right to recourse against his or her community property and separate property for any or all Obligations to the fullest extent permitted by law.

6.12 Defense of Actions and Protection of Security by Lender. Whether or not an Event of Default has occurred, Lender and Trustee shall each have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Borrower, any of the Guarantors, or any other Person, which affects or which Lender or Trustee determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Lender's, Trustee's, or Borrower's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Lender by reason of its interest in the Property. Lender and Trustee shall each have the right, but not the obligation, to commence and prosecute any action or proceeding which Lender or Trustee determines to be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims, or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds pursuant to this Deed of Trust; (iii) preserve, protect, maintain, and defend the Property and Lender's lien thereon; or (iv) enforce or exercise any right, remedy or power available to or conferred on Lender or Trustee under the Loan Documents or Governmental Requirements. Lender and Trustee shall each have the right to discontinue, suspend or dismiss any such action or proceeding which has been commenced by Lender or Trustee at any time.

6.13 Expenses. Lender and Trustee, and each of them, shall have the right to incur and pay all costs, fees, expenses, and liabilities that Lender and Trustee, respectively, determine to be necessary or appropriate in connection with any or all of the following matters (all such costs, fees, expenses and liabilities, excluding ordinary overhead expenses of Lender's and Trustee's respective regular business premises and salary expenses for Lender's and Trustee's respective clerical and supervisory personnel, are referred to collectively as the "Reimbursable Costs"): (a) costs and expenses incurred in the management, servicing, or administration of the Loan and any Future Advances which relate to Lender's review of those documents, transactions or other matters requiring Lender's approval under the terms of the Loan Documents; (b) the exercise of any or all of Lender's and Trustee's respective rights and remedies under the Loan Documents, including (i) all premiums and other costs and expenses paid or incurred by Lender in connection with Lender's obtaining any Insurance Policies, and (ii) all costs and expenses, including attorneys' fees and costs, incurred in connection with Lender's review, preparation, analysis, or negotiation, as applicable, of any of the further documents or other matters that are contemplated by the Loan Documents or that Lender has the right to require, review or approve pursuant to the Loan Documents, including Leases, estoppel certificates from any Tenant under any Lease or from any other Person, and non-disturbance, subordination or attornment agreements by any Tenant under any Lease or by any other Person; (c) the enforcement of any or all of the Obligations or any other obligation of any Person liable to Lender in connection with the Loan or any Future Advance, whether or not any legal action or proceeding is commenced by Lender; (d) the preservation, protection,

maintenance, or defense of the Property or Lender's lien thereon; (e) the sale or disposition of the Property or any other collateral securing any or all of the Obligations; (f) the defense of any action or proceeding commenced by Borrower, any of the Guarantors, or any other Person under Section 6.12 above; or (g) the commencement and prosecution of any action or proceeding by Lender or Trustee with respect to any or all of the matters described in this Section or in Section 6.12 above, including an action for relief from any stay, injunction, or similar order or enactment arising under any federal or state bankruptcy, insolvency or similar law. Without limiting the terms of this Section, Lender shall have the right to do any or all of the following in connection with any of the matters described in this Section, and all costs, fees, expenses, and liabilities incurred or paid in connection therewith shall constitute Reimbursable Costs: (1) select, retain, and consult with attorneys, accountants, appraisers, contractors, brokers, architects, engineers and such other experts, consultants, advisors and third Persons as Lender determines to be necessary or appropriate; (2) settle, purchase, compromise or pay any or all claims, demands, and Liens; and (3) obtain any Trustee's sale guaranty or other title insurance coverage relating to the Property which Lender determines to be necessary or appropriate. Wherever any of the terms of the Loan Documents provide for the payment or recovery of costs, fees, or other expenses (including attorneys' fees and costs), such term shall be deemed to provide for the payment or recovery of reasonable costs, fees, expenses, and reasonable attorneys' fees and costs.

6.14 Payment of Advances by Borrower. All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Lender under any other provision of the Loan Documents or under Governmental Requirements in connection with the Obligations or the Property (a) shall be payable by Borrower to Lender on Lender's demand; (b) shall constitute additional indebtedness of Borrower to Lender; (c) shall be secured by this Deed of Trust, and (d) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Trustee under this Deed of Trust or under Governmental Requirements in connection with this Deed of Trust shall be payable by Borrower to Trustee on Trustee's demand and shall bear interest at the maximum rate permitted to be charged by Trustee under Governmental Requirements. Nothing contained in this Deed of Trust shall be deemed to obligate Lender or Trustee (i) to incur any costs, fees, expenses, or liabilities; (ii) to make any appearances in or defend any action or proceeding; or (iii) to commence or prosecute any action or proceeding relating to any matter

6.15 No Third Party Beneficiaries. The Loan Documents are entered into for the sole protection and benefit of Lender, Borrower and Trustee and their respective permitted successors and assigns. No other Person shall have any rights or causes of action under the Loan Documents.

6.16 Notices. All notices and demands by Lender to Borrower under this Deed of Trust and the other Loan Documents shall be in writing and shall be effective on the earliest of (a) personal delivery to Borrower; (b) two (2) days after deposit in first-class or certified United States mail, postage prepaid, addressed to Borrower at the address set forth in this Deed of Trust; and (c) one (1) business day after deposit with a reputable nationally recognized overnight delivery service, delivery charges prepaid, addressed to Borrower at the address set forth in this Deed of Trust; provided, however, that notwithstanding anything to the contrary contained in this Section, service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing. All notices and demands by Borrower to Lender under this Deed of Trust shall be in writing and shall be effective on actual receipt by Lender at Lender's address set forth in this Deed of Trust; provided, however, that nonreceipt of any such notice or demand by Lender as a result of Lender's refusal to accept delivery or Lender's failure to notify Borrower of Lender's change of address shall be deemed receipt by Lender. Borrower's and Lender's respective addresses set forth in this Deed of Trust may be changed by written notice given to the other party in accordance with this Section. If Borrower consists of more than one Person, service of any notice or demand on any one of such Persons by Lender shall be effective service on Borrower for all purposes.

6.17 Performance of Covenants. Borrower shall perform and comply with all of its obligations under this Deed of Trust at Borrower's sole cost and expense.

6.18 Severability; Savings Clause. If any provision of the Loan Documents shall be held by any court of competent jurisdiction to be unlawful, voidable, void, or unenforceable for any reason, such provision shall be deemed to be severable from and shall in no way affect the validity or enforceability of the remaining provisions of the Loan Documents. Notwithstanding anything to the contrary contained in the Note or any of the other Loan Documents, the interest and other amounts paid or agreed to be paid to the Lender in consideration of the Loan evidenced by the Note (such interest and other amounts are referred to collectively as "Interest") shall not exceed the maximum rate permitted under applicable usury laws. If, for any reason, the Interest exceeds the maximum rate permitted under applicable usury laws, then (a) all excess Interest amounts previously collected by the Lender shall be credited against the principal balance of the Note or, at the Lender's option, to any other principal indebtedness of Borrower to Lender arising out of the Loan evidenced by the Note; (b) if the Note and all such other indebtedness have been paid in full, such excess amounts shall be refunded by the Lender to Borrower; and (c) the provisions of the Note shall automatically be deemed to be reformed and the amount of Interest payable hereunder shall automatically be deemed to be reduced, without the execution of any further documents by Borrower or Lender, so as to provide for the payment of Interest in an amount equal to, but not exceeding, the maximum rate permitted under applicable usury laws. All consideration paid to the Lender which constitutes Interest under applicable usury laws shall be amortized, prorated, allocated, or otherwise apportioned throughout the term of the Note so that, to the extent possible, the rate of interest on the principal amount of the Note does not exceed the maximum rate permitted under applicable usury laws

6.19 Interpretation. Whenever the context of the Loan Documents reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. For purposes of this Deed of Trust, all references to the Property or Improvements shall be deemed to refer to all or any part of the Property or Improvements, respectively. The headings to sections of this Deed of Trust are

for convenient reference only, and they do not in any way define or limit any of the terms of this Deed of Trust and shall not be used in interpreting this Deed of Trust. For purposes of this Deed of Trust, the Note, and each of the other Loan Documents, (a) the term "including" shall be deemed to mean "including without limitation," (b) the term "document" shall include all written contracts, commitments, restrictions, agreements (including loan agreements), deeds of trust, mortgages, notes, and instruments; and (c) the term "discretion," when applied to any determination, consent or approval right by the Lender under this Deed of Trust, the Note, and the other Loan Documents, shall be deemed to mean the Lender's sole and absolute discretion (and the use of the phrase "sole and absolute discretion" in certain instances in this Deed of Trust and other Loan Documents shall not affect the rule of interpretation contained in this clause (c)).

6.20 Time of the Essence. Time is of the essence in the performance of each provision of the Loan Documents by Borrower.

6.21 Amendments. The Loan Documents (excluding the Guaranties) may be modified only by written agreement signed by Lender and Borrower.

6.22 Entire Agreement. The Loan Documents contain the entire agreement concerning the subject matter of the Loan Documents and supersede all prior and contemporaneous negotiations, agreements, statements, understandings, terms, conditions, representations and warranties, whether oral or written, between Lender and Borrower concerning the Loan and any Future Advances which are the subject matter of the Loan Documents.

6.23 No Waiver by Lender. No waiver by Lender of any of its rights or remedies in connection with the Obligations or of any of the terms or conditions of the Loan Documents shall be effective unless such waiver is in writing and signed by Lender Without limiting the generality of this Section, (a) no delay or omission by Lender in exercising any of its rights or remedies in connection with the Obligations shall constitute or be construed as a waiver of such rights or remedies, (b) no waiver by Lender of any default by Borrower under the Loan Documents or consent by Lender to any act or omission by Borrower shall constitute or be construed as a waiver of or consent to any other or subsequent default, act or omission by Borrower; (c) no disbursement of the proceeds of the Loan or any Future Advance by Lender following any Event of Default shall constitute or be construed as a waiver of such Event of Default or obligate Lender to make any other disbursement under the Loan Documents; (d) no acceptance by Lender of any late payment or late or defective performance of any of the Obligations by Borrower shall constitute a waiver by Lender of the right to require prompt payment and performance strictly in accordance with the Loan Documents with respect to any other payment or performance of any of the Obligations; (e) no acceptance by Lender of any payment or performance following any notice of default which has been given or recorded by Lender shall constitute a waiver of Lender's right to proceed with the exercise of its remedies with respect to any Obligations which have not been paid or performed in full; (f) no acceptance by Lender of any partial payment or performance shall constitute a waiver by Lender of any of its rights or remedies relating to any Obligations which have not been paid or performed in full; and (g) no application of Rents and Profits, Insurance Proceeds, Condemnation Proceeds or Property Proceeds to any of the Obligations shall constitute or be construed as a waiver by Lender or cure of any Event of Default or impair, prejudice, invalidate or otherwise affect any action by Lender or Trustee in response to such default.

6.24 Waivers by Borrower. Borrower waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents. Borrower waives the right to assert any statute of limitations as a defense to the enforcement of any or all of the Loan Documents to the fullest extent permitted by law. Borrower waives all rights, remedies, and benefits under California Civil Code Section 2822(a). Without limiting the generality of the immediately preceding sentence, in the event of Borrower's payment in partial satisfaction of any or all of the Obligations, Lender shall have the sole and exclusive right and authority to designate the portion of the Obligations that is to be satisfied.

6.25 Waiver of Marshalling. Borrower and all Persons holding a Lien affecting the Property who have actual or constructive notice of this Deed of Trust waive (a) all rights to require marshalling of assets or liens in the event of Lender's exercise of any of its rights and remedies under this Deed of Trust, including any judicial or nonjudicial foreclosure sale of the Property, (b) all rights to require Lender to exhaust its rights and remedies against any other collateral securing any or all of the Obligations before pursuing its rights and remedies under this Deed of Trust; and (c) all rights to require Lender to exercise any other right or power or to pursue any other remedy which Lender may have under any document or Governmental Requirements before pursuing its rights and remedies under this Deed of Trust.

6.26 Waiver of Subrogation. Borrower waives all rights to recover against Lender for any loss or damage incurred by Borrower from any cause which is insured under any of the Insurance Policies, except that the foregoing waiver of subrogation shall not be effective with respect to any Insurance Policy if the coverage under such policy would be materially reduced or impaired as a result of such waiver. Borrower shall use its best efforts to obtain Insurance Policies which permit the waiver of subrogation contained in this Section.

6.27 Cumulative Remedies. No right or remedy of Lender or Trustee under this Deed of Trust or the other Loan Documents shall be exclusive of any other right or remedy under the Loan Documents or to which Lender or Trustee may be entitled Lender's rights and remedies under the Loan Documents are cumulative and in addition to all other rights and remedies which Lender may have under any other document with Borrower and under Governmental Requirements. Lender shall have the right to exercise any one or more of its rights and remedies in connection with the Obligations at Lender's option and in its sole and absolute discretion, without notice to Borrower or any other Person (except as otherwise expressly required by law or under the Loan Documents), and in such order as Lender may determine in its sole and absolute discretion. If Lender holds any collateral in addition to the Property for any of the Obligations, Lender, at its option, shall have the right to pursue its rights or remedies with

respect to such other collateral either before, contemporaneously with, or after Lender's exercise of its rights or remedies with respect to the Property. Upon the occurrence of an Event of Default, Lender, at its option, shall have the right to offset against any debt or monies due from Lender to Borrower against all or part of the Obligations

6.28 **Subrogation to Lien Rights.** If any or all of the proceeds of the Note or any Future Advance are directly or indirectly used to pay any outstanding Lien against the Property, or if Lender pays or discharges any Lien pursuant to any of the terms of the Loan Documents or under Governmental Requirements, Lender shall be subrogated to all rights and liens held by the holder of such Lien, regardless of whether such Lien is reconveyed.

6.29 **Joint and Several Liability.** Each Person signing this Deed of Trust as Borrower shall be jointly and severally liable to Lender for the performance of Borrower's obligations under the Loan Documents. If Borrower consists of more than one Person, the occurrence of any Event of Default with respect to any one or more of such Persons shall constitute an Event of Default and entitle Lender to exercise its rights and remedies under Article 4 of this Deed of Trust.

6.30 **Sale of Loan Documents and Participations.** Lender shall have the right to do any or all of the following at any time without prior notice to or the consent of Borrower or any other Person: (a) to sell, transfer, pledge or assign any or all of Loan Documents, or any or all servicing rights with respect thereto; (b) to sell, transfer, pledge or assign participations in the Loan Documents ("Participations"); and (c) to issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender is authorized to forward or disclose to each purchaser, transferee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "Investor") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan and to Borrower or any Guarantor as Lender determines to be necessary or desirable. Upon Lender's request, Borrower shall reasonably cooperate with Lender in connection with any of the transactions contemplated by this Section. Notwithstanding anything to the contrary contained in this Deed of Trust or any of the other Loan Documents, from and after the date of any sale, transfer or assignment of the Note and other Loan Documents by Lender, the cross-default provision contained in Section 3.3 of this Deed of Trust shall terminate and shall be of no further force or effect.

6.31 **Applicable Law; Jurisdiction.** The Loan Documents shall be governed by and construed in accordance with the laws of the State of California. Borrower consents to personal jurisdiction over Borrower by the courts of the State of California and agrees that service of process on Borrower may be effected by certified or registered mail, return receipt requested, directed to Borrower at its address shown in this Deed of Trust.

6.32 **Successors.** Subject to the restrictions contained in the Loan Documents, the Loan Documents shall be binding upon and inure to the benefit of Lender and Borrower and their respective permitted successors and assigns.

6.33 **Power of Attorney.** Borrower irrevocably appoints Lender, with full power of substitution, as Borrower's attorney-in-fact, coupled with an interest, with full power, in Lender's own name or in the name of Borrower (a) to take any or all of the actions specified in Article 4 above with respect to the Property; and (b) to sign and record notices of completion, notices of cessation of labor, and any other similar notice or document which Lender determines to be necessary or appropriate to protect its interests in connection with the Obligations. Lender shall have the right to exercise the power of attorney granted in this Section directly or to delegate all or part of such power to one or more agents of Lender. Nothing contained in this Deed of Trust shall be construed to obligate Lender to act on behalf of Borrower as attorney-in-fact.

6.34 **No Merger.** There shall be no merger of any estate in the Property which Borrower acquires after the date of this Deed of Trust with all or any portion of the estate in the Property which Borrower holds as of the date of this Deed of Trust, unless Lender shall expressly agree otherwise in writing.

6.35 **Request for Notices.** Borrower hereby requests that a copy of any notice of default and notice of sale as may be required by law be mailed to Borrower at its address stated above.

ARTICLE 7

UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

7.1 **Uniform Commercial Code Security Agreement.** Article 7 of this Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code of the State in which the Property is located (the "Code"). All terms that are used in this Article 7 but which are not specifically defined in this Deed of Trust shall have the meanings given go such terms in the Code. To secure payment and performance of the Obligations, Borrower grants Lender a security interest in all now owned and hereafter acquired personal property of Borrower now or hereafter located on the Property or now or hereafter obtained for, used connection with, or otherwise relating to the design, planning, construction, development, use, operation, maintenance, or marketing of the Property (collectively, the "Personal Property Collateral"), including the following: (a) all fixtures, machinery, machines, motor vehicles, tools, parts, equipment, pumps, engines, motors, boilers, incinerators, building materials, inventory, supplies, goods, systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light, elevators and related machinery and equipment, fire prevention and extinguishing equipment, security and access control equipment, plumbing, showers, bath tubs, water heaters, toilets, sinks, stoves, ranges, refrigerators, dishwashers, disposals, laundry equipment, wall, window and floor coverings, partitions, doors, windows, hardware, waste and rubbish removal equipment, recreational equipment, signs, furniture,

furnishings, appliances, telephone equipment, computer systems, office equipment and supplies, plants, carpets, rugs, sculptures, art work, mirrors, tables, lamps, beds, television sets, light fixtures, chandeliers, desks, cabinets, bookcases, chairs, sofas, benches, and janitorial and maintenance equipment and supplies, and all substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing; (b) all deposits, advance payments, security deposits, and rental payments made by or on behalf of Borrower to others in connection with the Property and relating to any or all of the following: (i) management or operational services, (ii) marketing services; (iii) architectural, engineering, or design services; (iv) utility services; (v) cleaning, maintenance, security, or repair services; (vi) rubbish or refuse removal services; (vii) sewer services; (viii) rental of furnishings, fixtures or equipment; (ix) parking; or (x) any service similar to any or all of the foregoing; (c) all reports, appraisals, drawings, plans, blueprints, studies, specifications, certificates of occupancy, building permits, grading permits, and surveys relating to all or part of the Property, and all amendments, modifications, supplements, general conditions and addenda thereto; (d) all trade names, trademarks, trade styles, service marks, domain names, computer software and computer software products, logos, letterheads, advertising symbols, goodwill, telephone numbers, advertising rights, negatives, prints, brochures, flyers, pamphlets and other media items used or intended to be used in connection with the Property; (e) all warranties and guaranties, whether written or oral, from any third Person which directly or indirectly relate to all or part of the Property or personal property described in parts (a) through (d) of this Section 7 1; (f) all legal and equitable claims, causes of action, and rights against architects, engineers, designers, contractors, subcontractors, suppliers, materialmen and any other Persons supplying labor, services, materials or equipment, directly or indirectly, in connection with the design, planning, construction, development, use, operation, maintenance, or marketing of all or part of the Property; (g) all Condemnation Claims, Condemnation Proceeds, Property Claims (including commercial tort claims), Property Proceeds, Insurance Claims, and Insurance Proceeds (regardless of whether or not Lender required Borrower to obtain or maintain in effect the Insurance Policy or Insurance Policies under which the Insurance Claims arise or the Insurance Proceeds are payable); (h) all real property tax refund claims, general intangibles (including payment intangibles), letters of credit, letter-of-credit rights, supporting obligations, accounts, deposit accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), health-care-insurance receivables, and accounts receivable relating to the design, planning, construction, development, use, operation, maintenance or marketing of all or part of the Property or any business now or hereafter conducted on the Property, including any right to payment for goods sold or leased or to be sold or leased or for services rendered or to be rendered, however evidenced, including purchase orders, negotiable documents, notes, drafts, acceptances, claims, instruments, insurance policies, and all other forms of obligations and receivables; and (i) all products and proceeds of any or all of the foregoing personal property, including all money, deposit accounts, accounts, chattel paper, documents, notes, drafts, instruments, insurance proceeds, and all other tangible and intangible property resulting from the sale, lease, or other disposition of any or all of the foregoing personal property.

7.2 Filing. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items of Personal Property Collateral specified in Section 7.1 above which is or may be part of the Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower (a) irrevocably authorizes Lender to file a financing statement with respect to any or all of the Personal Property Collateral and such other financing statements, addenda thereto, and financing statement amendments, termination statements, continuation statements, and assignments in such filing offices or with such other Governmental Authorities as Lender may deem to be necessary or appropriate in order to perfect the security interest granted to Lender under this Article 7 or to otherwise effectuate the terms of this Article 7; (b) agrees to execute and deliver to Lender, upon Lender's request, any or all of such documents in such form as Lender may require to perfect the security interest granted to Lender under this Article 7 or to otherwise effectuate the terms of this Article 7. Borrower shall pay all costs of filing of such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements that Lender may reasonably require.

7.3 Additional Covenants of Borrower. Borrower, at its sole cost and expense, (a) shall give Lender at least thirty (30) days prior written notice of (i) if Borrower is an individual, any change in Borrower's principal residence; (ii) if Borrower is a registered organization as to which the state or other Governmental Authority under which Borrower is organized maintains a public record showing Borrower to have been organized (a "Registered Organization"), any change in the state or Governmental Authority under which Borrower is organized; (iii) if Borrower is an organization which is not a Registered Organization, any change in Borrower's place of business or chief executive office; and (iv) the acquisition or use of a trade name or style by Borrower, (b) shall promptly notify Lender in writing of any claim, lien, security interest, right, encumbrance or any other occurrence which may be adverse to Lender's security interest in the Personal Property Collateral; (c) shall defend the Personal Property Collateral from all claims, liens, security interests, rights, encumbrances and other matters which are adverse to Lender's security interest in the Personal Property Collateral; (d) shall promptly pay all costs and expenses relating to the purchase, ownership, or use of the Personal Property Collateral, including all liens, taxes, assessments and charges of Governmental Authorities levied, assessed or imposed on all or part of the Personal Property Collateral; (e) shall not sell, transfer, pledge, hypothecate, lease or otherwise dispose of or abandon all or part of the Personal Property Collateral without Lender's prior written consent, except for the sale of inventory in the ordinary course of Borrower's business, the disposition of any Personal Property Collateral which is obsolete or which has a de minimis value, and the disposition of any Personal Property Collateral which is promptly replaced with new Personal Property Collateral of substantially comparable value and utility; (f) shall not remove any material part of the Personal Property Collateral which consists of tangible personal property from its location on the Property without Lender's prior written consent, except for the sale of inventory in the ordinary course of Borrower's business, the disposition of any Personal Property Collateral which is obsolete or which has a de minimis value, and the disposition of any Personal Property Collateral which is promptly replaced with new Personal Property Collateral of substantially comparable value and utility; (g) shall, upon Lender's request, give notice, in form and substance acceptable to Lender, to any or all account debtors or Persons obligated on an instrument designated by Lender of Borrower's grant of a security interest in any Personal Property Collateral which consists of accounts, contract rights, instruments, documents, or general intangibles (referred to collectively as the "Accounts" and individually as an "Account"); (h) following the occurrence of any Event of Default, shall not compromise, settle, adjust, or grant any discount, credit, or allowance to any Account debtor without Lender's prior written consent; (i) shall undertake any and all other acts necessary or appropriate to

maintain, preserve and protect the Personal Property Collateral and Lender's security interest therein, including any actions requested by Lender; and (j) shall execute and deliver to Lender such other documents as Lender may request in order to evidence, effectuate, perfect, maintain, preserve or protect Lender's security interest in the Personal Property Collateral, including security agreements and assignments. If Borrower fails to execute and deliver to Lender any document requested by Lender pursuant Section 7 3(j) within ten (10) days after such request, then Borrower irrevocably appoints Lender, with full power of substitution, as Borrower's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Borrower, to execute such document on behalf of Borrower. Borrower has set forth above its full and correct name, and Borrower does not presently use any other names or tradenames, except for those tradenames specifically disclosed in writing by Borrower to Lender prior to the recordation of this Deed of Trust. Nothing contained in this Article 7 shall be construed to obligate Lender to act on behalf of Borrower as attorney-in-fact.

7.4 **Rights and Additional Remedies of Lender under Uniform Commercial Code.** Without limiting Article 4 above, upon the occurrence of an Event of Default, Lender shall have the following additional rights and remedies with respect to the Personal Property Collateral: (a) Lender shall have all the rights and remedies of a secured party under the Code and under any other Governmental Requirements, and, at Lender's option, shall also have the right to invoke any or all of the remedies provided in Article 4 of this Deed of Trust with respect to the Personal Property Collateral, and in exercising any of such remedies, Lender may proceed against the items of real property and any items of Personal Property Collateral separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Code or of the remedies provided in Article 4 of this Deed of Trust, (b) Lender, at its option, shall have the right (i) to direct any or all Account debtors to make payment directly to Lender; (ii) to demand, collect, receive and give receipts for any and all money and other property due or to become due in connection with all or part of the Personal Property Collateral, including any of the Accounts; (iii) to take possession of and endorse and collect any or all notes, checks, drafts, money orders, or other instruments of payment relating to all or part of the Personal Property Collateral or proceeds of the Personal Property Collateral, including any of the Accounts; and (iv) to file any claim and take any other action which Lender determines to be appropriate for the purpose of collecting any or all of the Accounts and to compromise, adjust or settle Accounts for less than face value thereof, and to execute all releases and other documents in connection therewith; provided, however, that Lender shall not be obligated in any manner to make any demand for or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any action to collect or enforce the payment of any or all of the Accounts; (c) should Lender seek to take possession of any or all of the Personal Property Collateral by court process, Borrower irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose without regard to the adequacy of the security for the Obligations, and (d) Borrower irrevocably appoints Lender, with full power of substitution, as Borrower's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Borrower to take any or all of the actions described in Section 7.4(b) after the occurrence of an Event of Default. Lender, at its option, and whether or not an Event of Default exists, shall at all times have the right [A] to take such actions as Lender determines to be necessary or appropriate to maintain, preserve and protect the Personal Property Collateral and Lender's security interest therein; and [B] to give notice to any Account debtor containing such information and instructions concerning the existence of Lender's security interest and rights in the Personal Property Collateral under this Deed of Trust as Lender determines to be necessary or appropriate to protect its interest

7.5 **Fixtures.** The Personal Property Collateral in which Lender has a security interest under this Article 7 includes goods which are or may become Fixtures on the Property. This Deed of Trust constitutes a fixture filing pursuant to the terms of Section 9502 of the Code which shall be recorded in the real estate records of the county in which the Property is located and that relates to the Property more particularly described in this Deed of Trust. In that regard, the following information is provided:

Name of Debtor:	**Oceanwide Plaza LLC, a Delaware limited liability company, formerly known as Tohigh Construction Investment, LLC, a Delaware limited liability company**
Address of Debtor:	**865 South Figueroa Street, Suite 3150, Los Angeles, California 90017**
Name of Secured Party.	**L.A. Downtown Investment LP, a California limited partnership**
Address of Secured Party:	**7000 E. Slauson Avenue, Commerce, California 90040**

ARTICLE 8

ENVIRONMENTAL COMPLIANCE

8.1 **Certain Definitions.** For purposes of this Deed of Trust, the following terms shall have the following definitions.

(a) **Governmental Authority** "Governmental Authority" means, collectively, (1) the United States; (2) the state, county, city, and any other political subdivision in which the Property is located; (3) all other governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities or authorities; and (4) all judicial authorities and public utilities having or exercising jurisdiction over Borrower or the Property.

(b) **Hazardous Substance**. "Hazardous Substance" means any:

(1) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any or all of the following statutes and regulations, as the same may be amended from time to time:

[A] The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq. ("CERCLA");

[B] The Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101, et seq.;

[C] The Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., ("RCRA");

[D] The Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.,

[E] The Clean Water Act, 33 U.S.C. Sections 1251, et seq.;

[F] The California Hazardous Waste Control Act, California Health and Safety Code Sections 25100, et seq.;

[G] The California Hazardous Substance Account Act, California Health and Safety Code Sections 25300, et seq.;

[H] The California Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Sections 25249.5, et seq.;

[I] California Health and Safety Code Sections 25280, et seq. (pertaining to underground storage of Hazardous Substances);

[J] The California Hazardous Waste Management Act, California Health and Safety Code Sections 25179.1, et seq.;

[K] California Health and Safety Code Sections 25500, et seq. (pertaining to hazardous materials response plans and inventory);

[L] The California Porter-Cologne Water Quality Control Act, California Water Code Sections 13000, et seq.;

[M] California Civil Code Section 2929.5 (pertaining to inspections relating to hazardous substances); or

[N] All other existing and future federal, state and local laws, ordinances, rules, regulations, orders, requirements, and decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material;

(2) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability [1] under any of the statutes or regulations described in clauses [A] through [N] of Section 8.1.(b)(1) above; [2] under any statutory or common law theory, including negligence, trespass, intentional tort, nuisance or strict liability; or [3] under any reported decisions of any state or federal court;

(3) Petroleum, petroleum products and by-products, gasoline or crude oil, other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(4) Asbestos or asbestos containing materials.

(c) **Hazardous Substance Laws**. "Hazardous Substance Laws" means all existing and future laws, ordinances, rules, regulations, orders and requirements of all Governmental Authorities (including the statutes and regulations identified in Section 8.1.(b)(1) above and all licenses, permits, plans and approvals granted or issued under or pursuant to such statutes and regulations) relating to any or all of the following:

(1) Any Hazardous Substance, including the use, storage, generation, production, treatment, disposal, handling, release, discharge, transportation, repair, cleanup, remediation, removal or decontamination of any Hazardous Substance; and

(2) Industrial hygiene or the environmental conditions in, on, under or about the Property or any property adjacent to the Property, including soil, air, and groundwater conditions.

(d) **Indemnified Parties**. "Indemnified Parties" means the Lender and its Loan participants, and each of them, and each of their respective officers, directors, agents, attorneys, employees, representatives, shareholders, parent companies, subsidiaries, affiliates, successors and assigns.

(e) **Hazardous Substance Claims and Losses**. "Hazardous Substance Claims and Losses" means all claims, demands, damages (including special and consequential damages), liabilities, actions, causes of action, legal proceedings, administrative proceedings, suits, injuries, costs, losses, debts, liens, interest, fines, charges, penalties and expenses (including attorneys', accountants', consultants', and expert witness fees and costs) of every kind and nature (all of the foregoing are referred to collectively as the "Claims and Losses") which directly or indirectly arise out of or relate to any or all of the following, but only to the extent such Claims and Losses are incurred or suffered by any of the Indemnified Parties or are asserted against any or all of the Indemnified Parties prior to the Lien Termination Date:

(1) Any breach by Borrower of any representation, warranty or obligation contained in the Deed of Trust relating to Hazardous Substances;

(2) The existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, or under the Property, whether caused by Borrower or any other Person, including any prior owner, Tenant, or occupant of the Property;

(3) The release (including any "release" as defined in California Civil Code Section 2929.5), discharge, or transport of any Hazardous Substance onto or from the Property, including contamination of any property adjacent to the Property from the Property or any natural resources (including groundwater), whether caused by Borrower or any other Person, including any prior owner, Tenant, or occupant of the Property;

(4) The violation of any Hazardous Substance Laws, whether by Borrower or any other Person, including any prior owner, Tenant, or occupant of the Property; or

(5) Any repair, cleanup, remediation, removal, closure, or decontamination activity relating to any Hazardous Substance existing in, on, or under the Property, including any preparation for and investigation, testing, and monitoring relating to any such activity, whether or not such activity is undertaken or required as a result of any requirement of any Governmental Authority; or

(6) Any personal injury, death, or property damage resulting from or relating to any or all of the matters described in clauses (1) through (5) above.

(f) **Lien Termination Date**. "Lien Termination Date" means the earlier to occur of the following dates: (a) the date on which the Lender or any other Person acquires title to all or part of the Property as a result of a foreclosure or deed in lieu of foreclosure under the Deed of Trust; or (b) the date on which Lender reconveys the Property under the Deed of Trust.

8.2 **Compliance with Hazardous Substance Laws**. Borrower shall comply and cause the Property to comply with all Hazardous Substance Laws. Without limiting the generality of the preceding sentence, Borrower shall not cause or permit (a) the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property, whether such activities are conducted by Borrower or any other Person, including any Tenant or occupant of the Property, including the installation of any underground storage tanks or facilities for the deposit or storage of any Hazardous Substances; or (b) the release, discharge, or transport of any Hazardous Substance onto or from the Property, including the contamination of any natural resources, including groundwater. All lease agreements, if any, entered into by Borrower with respect to the Property shall contain a provision prohibiting the Tenant under such lease from conducting any of the activities described in clauses (a) and (b) of this Section 8.2. Notwithstanding anything to the contrary contained in this Section, nothing contained in this Section shall be deemed to prohibit the use or existence on the Property of any or all of the following (collectively, the "Permitted Substances"): (1) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property in a regular and customary manner and in compliance with all applicable Hazardous Substance Laws; and (2) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products [A] which are customarily used in the ordinary course of business by Borrower or by Tenants under and in compliance with Leases that either do not require Lender's approval under the terms of the Loan Documents or which have been approved by Lender in accordance with the Loan Documents (collectively, the "Approved Leases"); [B] which are used in the manner for which they were designed; [C] which are used in such amounts as may be normal and prudent for the business operations conducted on the Property pursuant to the Approved Leases; and [D] which are handled, stored and disposed of in compliance with all applicable Hazardous Substance Laws. The references to the term "Hazardous Substances" in this Deed of Trust shall not be deemed to include the Permitted Substances.

8.3 **Environmental Assessment**. Within forty-five (45) days after the Lender's written request to Borrower from time to time, Borrower shall cause to be prepared and delivered to the Lender, at Borrower's expense, an environmental site assessment and report for the Property, or an update of any such environmental site assessment and report which has previously been prepared by or for Borrower, prepared by a qualified, state-registered, professional environmental auditor reasonably acceptable to the Lender (the "Assessment Report"). Following the closing of the Loan, the Lender may only request an

Assessment Report following the occurrence of an Event of Default under the Deed of Trust or where the Lender has learned of or reasonably suspects (a) the existence, presence, use, storage, handling, generation, production, treatment, disposal or handling of any Hazardous Substance in, on, under or about the Property, (b) the release, discharge or transport of any Hazardous Substance onto or from the Property; or (c) the threatened release, discharge, or transport of any Hazardous Substance onto or from the Property.

8.4 **Contents of Assessment Report**. If specifically requested by the Lender, each Assessment Report shall include the following information: (a) a description of the presence, character, location or amount of Hazardous Substances in, on, under or about the Property or property adjacent to the Property; (b) a review and audit of all books, records, permits, notices, citations, orders and other data and information in the possession or control of Borrower relating to Hazardous Substances in, on, under or about the Property or any property adjacent to the Property, including historical data and information (if such data and information is not covered in any prior Assessment Report received by the Lender); (c) a review and report on any records or listings of any Governmental Authority concerning Hazardous Substances in, on, under or about the Property or any property adjacent to the Property; (d) an investigation and report on the history of ownership and use of the Property or any property adjacent to the Property, unless covered in any prior Assessment Report received by the Lender; (e) a report of interviews with the current Tenants and occupants, if any, of the Property concerning their use of the Property; (f) an evaluation of the likelihood of any soil or groundwater contamination resulting from any Hazardous Substances in, on, under or about the Property or any property adjacent to the Property; and (g) such other information or recommendations as the Lender may reasonably require.

8.5 **Remedial Actions by Borrower**. If the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property, or the release, discharge, or transport of any Hazardous Substance onto or from the Property (a) gives rise to or threatens to give rise to any Hazardous Substance Claims and Losses; (b) causes or threatens to cause a significant public health effect; or (c) pollutes or threatens to pollute the environment, then in any of such circumstances, Borrower shall, subject to Section 8.9 below, promptly commence and diligently prosecute all actions and proceedings which are reasonably necessary or appropriate (i) to repair, cleanup, remediate, and decontaminate the Property and any property adjacent to the Property (if the presence of Hazardous Substances in, on, or under such adjacent property was caused by a release by Borrower or any of its agents or from the Property) with respect to such Hazardous Substances and remove such Hazardous Substances therefrom; (ii) to mitigate any exposure to liability by Borrower or the Lender with respect to such Hazardous Substances; and (iii) to preserve, protect, and maintain the value of the Property, whether or not any or all of the actions described in clauses (i) through (iii) of this Section are required by any Hazardous Substance Law or any Governmental Authority.

8.6 **Indemnity**. Borrower shall indemnify and hold the Lender and the other Indemnified Parties harmless from and against any and all Hazardous Substance Claims and Losses. The Indemnified Parties' right to indemnification under this Section shall not directly or indirectly be limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of any Indemnified Party in connection with the Hazardous Substance Claims and Losses is active, passive or subject to any other classification or that any Indemnified Party is directly or indirectly responsible under any theory of any kind, character or nature for any act or omission by Borrower or any other Person. Notwithstanding anything to the contrary contained in this Section, Borrower shall not be obligated to indemnify any Indemnified Party for any liabilities resulting from the negligence or intentional tortious conduct of such Indemnified Party, which such Indemnified Party is determined by the final judgment or a court of competent jurisdiction to have committed. All costs, fees, expenses, advances, and other amounts paid by any Indemnified Party in connection with any Hazardous Substance Claims and Losses (a) shall be payable by Borrower to such Indemnified Party on such Indemnified Party's demand; and (b) shall bear interest from the date of expenditure by such Indemnified Party at the same rate of interest applicable to principal under the Note. Notwithstanding anything to the contrary contained in this Deed of Trust, Borrower's obligations, representations and warranties under this Article 8 shall survive and remain effective following the repayment of the Obligations, the reconveyance of the Property under this Deed of Trust, and any foreclosure, deed in lieu of foreclosure, or similar proceeding through which Lender or any other Person obtains title to the Property. Without limiting any of the terms of the Loan Documents, each of the Indemnified Parties, in its sole and absolute discretion, (i) shall have the right to select, retain and direct attorneys, accountants, consultants, and experts acceptable to such Indemnified Party to represent or advise it in connection with any of the Hazardous Substance Claims and Losses, and all reasonable costs, fees expenses and advances made or incurred by such Indemnified Party in connection therewith shall be deemed to be included in the Hazardous Substance Claims and Losses; and (ii) shall have the right to settle, compromise, adjust, and pay any or all of the Hazardous Substance Claims and Losses asserted against or incurred or suffered by it for such amounts and on such terms as the Indemnified Party may reasonably and in good faith determine; provided, however, that as long as Borrower is complying with its obligations to indemnify the Indemnified Parties with respect to the costs, fees, and expenses of defending against the Hazardous Substance Claims and Losses, Lender shall not enter into such settlement, compromise or adjustment without Borrower's written consent, which consent shall not be unreasonably withheld or delayed. Nothing contained in this Deed of Trust shall be deemed to obligate any Indemnified Party to pay any Hazardous Substance Claims and Losses.

8.7 **No Impairment of Borrower's Indemnification Obligations**. Borrower's indemnification obligations under Section 8.6 above shall not be impaired, diminished, or otherwise affected in any way as a result of any information, data, documents, or notice given to or received or obtained by any Indemnified Party regarding or relating to the release, threatened release, presence, existence, character, or magnitude of any Hazardous Substances in, on, under or about the Property or any property adjacent to the Property. No Indemnified Party shall be deemed to have permitted, caused, contributed to, or acquiesced in any "release" [as defined in California Code of Civil Procedure Section 736(f)(5)] as a result of the fact that such Indemnified Party had actual or constructive notice or knowledge of such release If Borrower consists of more than one Person, each Person who enters into this Deed of Trust as Borrower agrees that (a) it shall have no right of subrogation or contribution (whether under CERCLA or otherwise) against any other Borrower unless and until all indemnification obligations of such Person under Section 8 6 above to the Lender have been paid or satisfied in full; and (b) if and to the extent that the waiver of its rights of subrogation and

contribution under this Section is found by a court of competent jurisdiction to be void, voidable or unenforceable for any reason, any rights of subrogation or contribution that such Person may have shall be junior and subordinate to the Indemnified Parties' rights against each Borrower under this Deed of Trust.

8.8 Notices. Promptly upon receipt by Borrower, Borrower shall deliver complete and accurate copies of all notices, correspondence, and information which Borrower receives from or forwards to any Governmental Authority regarding (i) any Hazardous Substance in, on, under or about the Property or any property adjacent to the Property; or (ii) any actions instituted, contemplated, or threatened by any such Governmental Authority concerning any Hazardous Substance which affects or may affect the Property or any property adjacent to the Property. Borrower shall promptly notify the Lender in writing of (a) any information that Borrower obtains regarding any Hazardous Substance in, on, under or about the Property or any property adjacent to the Property; (b) any information that Borrower obtains regarding the release, discharge, or transport of any Hazardous Substance onto or from the Property or any property adjacent to the Property; (c) any Hazardous Substance Claims and Losses of which Borrower is aware, (d) any occurrence or condition on any property adjacent to the Property that might cause the Property to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or otherwise to be subject to any restrictions on the ownership, use, occupancy, or transferability of the Property under any Hazardous Substance Law. Without limiting Section 2.24 of the Deed of Trust, within five (5) business days after the Lender's request, Borrower, at its expense, shall provide the Lender with complete and accurate copies of all Books and Records relating to Hazardous Substances in, on, under or about the Property or any property adjacent to the Property which may be requested by the Lender.

8.9 Notice to Lender of Remedial Actions. Not less than thirty (30) days prior to (a) taking any action in response to the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property or any property adjacent to the Property, or to the release, discharge, or transport of any Hazardous Substance onto or from the Property, or (b) entering into any settlement agreement, consent decree, or other compromise or agreement regarding any Hazardous Substance Claims and Losses (such agreements and decrees are referred to collectively as "Hazardous Substance Agreements"), Borrower shall provide the Lender with a written notice (the "Remediation Notice") describing in reasonable detail the action proposed to be taken by Borrower or the nature of the Hazardous Substance Agreement to be entered into by Borrower as described in clauses (a) and (b) of this Section. The Lender, at its option, shall have the right to notify Borrower of any objections which the Lender has with respect to any matter described in the Remediation Notice. In the event of any such objection by the Lender, Borrower (i) shall not take the actions described in the Remediation Notice as to which the Lender has reasonably objected; and (ii) shall take such actions as may be reasonably required by the Lender to address and resolve the Lender's objections. If the Lender fails to give Borrower written notice of any such objections by the Lender within twenty (20) days after the Lender's receipt of the Remediation Notice, Borrower may proceed to take the actions described in the Remediation Notice; provided, however, that neither the Lender's failure to object, in whole or in part, to any proposed action described in any Remediation Notice, nor any communication between the Lender and Borrower relating to any such proposed action, shall constitute or be construed as the Lender's approval of any such actions. Borrower shall have the sole responsibility for all aspects of Borrower's business and the development, use, ownership, operation, maintenance, and repair of the Property, including [1] the suitability and adequacy of any proposed actions described in any Remediation Notice; and [2] the suitability and adequacy of any other action taken by Borrower with respect to the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property or any property adjacent to the Property or the release, discharge, or transport of any Hazardous Substance onto or from the Property. Without limiting any of the terms of the Loan Documents, Borrower agrees that the Lender shall not be directly or indirectly liable or responsible in any way or under any circumstances to Borrower or any other Person for any or all of the matters described in clauses (a) and (b) of this Section. Borrower shall not be required to provide the Lender with a Remediation Notice pursuant to this Section if Borrower reasonably determines that immediate action is reasonably required in connection with any matter described in clauses (a) or (b) of this Section and it is not practical to give the Lender the Remediation Notice prior to taking such action. Under such circumstances, Borrower shall provide the Lender with written notice of any such action taken by Borrower as soon as reasonably practicable. If Borrower breaches any its obligations under this Article 8, the Lender, at its option and its sole and absolute discretion, but without any obligation whatsoever to do so, may enter upon the Property and take any or all actions which Borrower was obligated to take and which the Lender reasonably determines to be necessary or appropriate [A] to repair, cleanup, remediate, or decontaminate the Property and any property adjacent to the Property with respect to any Hazardous Substances; and [B] to mitigate any exposure to Hazardous Substance Claims and Losses by the Lender with respect to any Hazardous Substances; and [C] to preserve, protect, and maintain the value of the Property, whether or not any or all of the actions described in clauses [A] through [C] of this Section are required by any Hazardous Substance Law or any Governmental Authority.

8.10 Defense of Actions and Protection of Security by Lender. Whether or not an Event of Default has occurred, the Lender shall have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Borrower or any other Person, relating to any Hazardous Substance Claims and Losses. The Lender shall have the right to incur and pay all reasonable costs, fees, expenses and liabilities that the Lender determines to be necessary or appropriate in connection with any such action or proceeding, and all such reasonable costs, fees, expenses and liabilities incurred or paid by the Lender (a) shall be payable by Borrower to the Lender on the Lender's demand; (b) shall constitute additional indebtedness of Borrower to the Lender; and (c) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. Nothing contained in this Deed of Trust shall be deemed to obligate the Lender to make any appearance in or defend any action or proceeding.

8.11 Inspection; Appointment of Receiver. The Lender, acting directly through its authorized agents or through a court-appointed receiver, shall have the right to enter upon and inspect the Property for the purpose of determining the existence, character, and magnitude of any Hazardous Substances in, on, under, or about the Property or any property adjacent to the Property. Such entry by the Lender shall be made during normal business hours and upon not less than two (2) business days prior

notice by the Lender to Borrower, except when the Lender in good faith determines that an emergency exists, in which case the Lender shall have the right to enter upon the Property without notice and at such different times as the Lender in good faith determines may be necessary or appropriate for the protection of the Lender's interests. Whether or not the Lender has elected to accelerate any or all of the Obligations, and regardless of whether or not an Event of Default exists, the Lender shall have the absolute and unconditional right to apply to any court of competent jurisdiction and obtain the appointment of a receiver or receivers to enforce the Lender's inspection rights relating to Hazardous Substances as authorized by California law, including in accordance with the provisions of California Code of Civil Procedure Section 564(c). If the Lender obtains the appointment of a receiver under any of the terms of this Deed of Trust or Governmental Requirements, Lender, in its sole and absolute discretion, shall have the right to seek and obtain a court order authorizing the receiver (a) to operate and maintain the Property, take custody of all Rents and Profits and use and apply the Rents and Profits in order to repair, cleanup, remediate, and decontaminate the Property with respect to any Hazardous Substances, and bring the Property into compliance with Hazardous Substance Laws; (b) to take any other action necessary or appropriate to ensure the Property's compliance with Hazardous Substance Laws, including the retention of consultants and contractors and negotiations with Governmental Authorities; and (c) to incur such other obligations and take such other actions as are ordinarily incurred by owners of real property, without any personal liability on the part of the receiver. The Lender's rights of inspection under this Section shall be superior to any rights in the Property granted by Borrower to any third Person, and all Tenants of the Property shall be deemed to have acquired their interests in the Property subject to Lender's rights under this Section. The Lender shall have no obligation or duty of any kind to enter on or inspect the Property or to examine or review any of Borrower's Books and Records relating to any Hazardous Substances. All such inspections and reviews by the Lender, including the Lender's review of any Assessment Report or proposed plan of testing, monitoring, cleanup or remediation, shall be for the Lender's sole benefit and not for the benefit of Borrower or any other Person. No inspection of the Property by the Lender shall constitute or be construed as a representation or determination by the Lender that the Property complies with any Hazardous Substance Laws or that Hazardous Substances are or are not present in, on, under, or about the Property or any property adjacent to the Property. All information prepared by or for the Lender in connection with the exercise of its rights under this Deed of Trust shall at all times be and remain the Lender's property, and the Lender shall have no obligation to disclose or otherwise make such information available to Borrower or any other Person, except as otherwise required by Governmental Requirements.

8.12 **Environmental Provisions**. For purposes of this Deed of Trust, the term "Environmental Provisions" means, collectively, (a) all of the terms of this Article 8; and (b) all other representations, warranties, indemnities, promises and covenants of Borrower contained in any or all of the Loan Documents relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, or future release, or threatened release, of any Hazardous Substances into, onto, beneath, or from the Property, or to past, present, or future compliance with any Hazardous Substance Laws. All Environmental Provisions contained in the Loan Documents shall be deemed to constitute "environmental provisions" within the meaning of California Code of Civil Procedure Section 736(f)(2).

8.13 **Lender's Right to Bring Separate Actions to Enforce Environmental Provisions**. Without limiting any of the terms of the Loan Documents, Borrower agrees that the Lender and the other Indemnified Parties shall each have the right to commence and prosecute one or more separate actions (a) for Borrower's breach of any Environmental Provisions; (b) for the recovery of damages based upon any such breach; (c) for enforcement of any of the Environmental Provisions, including Borrower's obligation to indemnify the Indemnified Parties with respect to Hazardous Substance Claims and Losses; and (d) for injunctive relief enforcing any or all of the Environmental Provisions, including an action in accordance with the provisions of California Code of Civil Procedure Section 736. No such separate action shall in any way be deemed to be an "action" within the meaning of California Code of Civil Procedure Section 726(a) or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of California Code of Civil Procedure Sections 580a, 580b, 580d, or 726(b), respectively. Borrower agrees that Lender shall have the right to bring one or more actions under this Section (i) without acceleration of the Obligations or commencement of foreclosure proceedings under this Deed of Trust; and (ii) whether or not Borrower is in default under the Note and whether or not any other Event of Default exists or has been declared by the Lender.

8.14 **Waiver of Lien at Lender's Sole Option**. Upon the occurrence of an Event of Default, Lender, at its option and in its sole and absolute discretion, but without any obligation whatsoever to do so, shall have the right (a) to waive its lien against all or part of the Property, to the extent such property is environmentally impaired, in accordance with California Code of Civil Procedure Section 726.5, and (b) to exercise any and all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property, including seeking an attachment order under California Code of Civil Procedure Section 483.010. As between Lender and Borrower, for purposes of California Code of Civil Procedure Section 726.5, Borrower shall have the burden of proving that Borrower or any party related to Borrower (or any affiliate or agent of Borrower or any such related party) (a) did not knowingly or negligently cause or contribute to, or knowingly or willfully permit or acquiesce in, the release or threatened release of the Hazardous Substances which caused the environmental impairment of the Property. The delivery of an execution original of this Deed of Trust to Borrower constitutes a written request for information by Lender to Borrower concerning the environmental condition of the Property within the meaning of California Code of Civil Procedure Section 726.5(d)(2). Nothing contained in this Deed of Trust shall be deemed to obligate the Lender to exercise any election that the Lender may have under California Code of Civil Procedure Section 726.5.

8.15 **Arbitration at Election of Lender Regarding Environmental Impairment**. If a dispute between the Lender and Borrower arises with respect to the issue of whether or not all or part of the Property is "environmentally impaired" within the meaning of California Code of Civil Procedure Section 726 5(e)(3), then the Lender, at its option and in its sole and absolute discretion, may elect to have such dispute resolved and settled by arbitration on the following terms and conditions:

(a) **American Arbitration Association Rules**. The arbitration shall be determined by three (3) arbitrators (the "Arbitrators") in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the decision rendered by the Arbitrators in such proceeding may be entered in any court of competent jurisdiction.

(b) **Procedure**. In the arbitration proceeding, the provisions of California Code of Civil Procedure Section 1283.05, or any successor or amended statute or law containing similar provisions, shall be applicable. The hearing on the matter shall be heard in Los Angeles, California. The judgment upon the decision rendered in any such arbitration shall be final and binding on the parties. The Arbitrators shall use their reasonable efforts to render a decision in such arbitration proceeding as expeditiously as possible and, in any event, within ninety (90) days after written notice of intention to arbitrate has been given by the Lender to Borrower. The Arbitrators shall have the power and authority to render a decision solely with respect to the issue of whether or not the Property, or the portion thereof which is the subject of the arbitration proceeding, is "environmentally impaired" within the meaning of California Code of Civil Procedure 726.5(e)(3). The Arbitrators shall render their decision in writing and shall cause a copy of such decision to be provided to the parties.

(c) **Costs**. All costs and expenses of any arbitration proceeding, excluding attorneys' fees, shall be shared equally by the Lender and Borrower. Each party shall bear its own attorneys' fees, provided, however, that if the Arbitrators determine that the Property is environmentally impaired under California Code of Civil Procedure Section 726.5(e)(3), Borrower shall pay all costs and expenses of the Lender in the arbitration proceeding, including attorneys' fees and costs incurred by the Lender.

(d) **Arbitration Election Held Solely by Lender**. Borrower acknowledges and agrees that the arbitration provisions contained in this Section may be invoked at the sole option and election of the Lender, and that Borrower shall have no right to require that the dispute described in this Section be submitted to arbitration. The Lender shall not be deemed to have invoked the arbitration procedure contained in this Section unless and until written notice of intention to arbitrate has been given by the Lender to Borrower.

8.16 Reimbursable Costs. Without limiting any of the terms of the Loan Documents, all costs, fees, expenses and other amounts advanced by the Lender under the terms of this Article 8 shall be deemed to constitute Reimbursable Costs under this Deed of Trust.

8.17 Assignment of Assessment Reports. Without limiting Section 1.28 of this Deed of Trust, the Property Claims that have been assigned by Borrower to the Lender under this Deed of Trust shall be deemed to include all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation and damages against any environmental consultant or third Person who prepared any Assessment Report for Borrower.

8.18 Warranties and Representations by Borrower. Borrower represents and warrants to the Lender as follows:

(a) **No Hazardous Substances**. To the best of Borrower's knowledge, (i) the Property does not contain any Hazardous Substances, and no underground storage tanks or underground deposits of Hazardous Substances are or previously have been located on the Property, except as specifically disclosed in writing by Borrower to the Lender prior to the date of this Deed of Trust (the "Deed of Trust Date"); and (ii) Borrower is in compliance with all Hazardous Substance Laws relating to the Property and the use of the Property, including those relating to disclosure to Tenants of the Property, except as specifically disclosed in writing by Borrower to the Lender prior to Deed of Trust Date. All information provided by Borrower to the Lender in any environmental questionnaire or disclosure statement requested by the Lender is accurate and complete in all respects

(b) **No Hazardous Substance Release**. To the best of Borrower's knowledge, no Hazardous Substance is being or has been released, discharged or transported onto or from the Property, except as specifically disclosed in writing by Borrower to the Lender prior to the Deed of Trust Date;

(c) **Hazardous Substance Litigation**. To the best of Borrower's knowledge, there is no pending or threatened action or proceedings before any Governmental Authority in which any Person alleges the existence, presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance, except as specifically disclosed in writing by Borrower to the Lender prior to the Deed of Trust Date;

(d) **Notices from Governmental Authorities**. Borrower has not received any written notice that (i) any Hazardous Substance exists or is present in, on, under or about the Property; (ii) any Hazardous Substance is being stored, generated, produced, treated, disposed of, or handled in, on, under or about the Property; or (iii) any Hazardous Substance has been or is being released, discharged, or transported onto or from the Property, except as specifically disclosed in writing by Borrower to the Lender prior to the Deed of Trust Date;

(e) **Agreements Regarding Hazardous Substances**. There have been no written communications or written agreements by Borrower with any Governmental Authority or any other Person, including any prior owners of the Property, relating in any way to the presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, under or about the Property, or the transportation to or from the Property, of any Hazardous Substance, except as specifically disclosed in writing by Borrower to the Lender prior to the Deed of Trust Date; and

(f) **Land Use Restrictions**. To the best of Borrower's knowledge, there is no land use restriction which has been imposed by the California Department of Toxic Substances Control pursuant to the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted pursuant thereto, that would prohibit or materially and adversely affect the current use of the Property under any Hazardous Substance Laws, except as specifically disclosed in writing by Borrower to the Lender prior to the date of Borrower's execution of this Deed of Trust.

8.19 **Continuing Warranties and Representations**. For purposes of Section 8.18 above, the term "to the best of Borrower's knowledge" shall be deemed to mean to the best knowledge of Borrower after a commercially reasonable and diligent investigation, inspection, and inquiry by Borrower. The warranties and representations contained in Section 8.18 above shall constitute continuing warranties and representations by Borrower to the Lender and shall survive the recordation of the Deed of Trust and any investigation, inspection or inquiry by the Lender.

8.20 **OFAC Lists**. Borrower represents and warrants as of the date of this Deed of Trust and at all times while the Obligations remain outstanding that (i) no Related Entity is (and to the Borrower's knowledge after a reasonably diligent inquiry, no other Person holding any legal or beneficial interest in any Guarantor, directly or indirectly, is) included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ("Executive Order 13224"), or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"), and (ii) none of the Related Entities are controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224, or any other OFAC Lists. For purposes of this Deed of Trust, the term "Related Entity" mean Borrowers, the Guarantors, any general partner, manager or managing member of or Person having a direct or indirect interest in, Borrower or the Guarantors (or any of them), and any other Affiliate of Borrower or the Guarantors which directly or indirectly owns any legal or beneficial interest in Borrower.

8.21 **Compliance With Anti-Terrorism Regulations**.

(a) Borrower agrees that (i) no Related Entity will be included in, owned by, controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise associate with any of the Persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224 or any other OFAC Lists, and (ii) none of the Related Entities will be controlled by, act for or on behalf of, provide assistance, support, sponsorship, or services of any kind to, or otherwise associate with any of the Persons referred to or described in any list of persons, entities, and governments issued by OFAC pursuant to Executive Order 13224, or any other OFAC Lists.

(b) Borrower agrees that it will comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub L. 107-56; the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 and any similar laws are regulation currently in force or hereafter enacted (collectively, the "Anti-Terrorism Regulations").

(c) Borrower agrees that if it becomes aware or receives any notice that any Related Entity is named on any of the OFAC Lists (such occurrence, an "OFAC Violation"), Borrower will immediately (i) give written notice to the Lender of such OFAC Violation, and (ii) comply with all laws applicable to such OFAC Violation (regardless of whether the party included on any of the OFAC Lists is located within the jurisdiction of the United States of America), including, without limitation, the Anti-Terrorism Regulations, and Borrower hereby authorizes and consents to the Lender's taking any and all steps the Lender deems necessary, in its sole discretion, to comply with all laws applicable to any such OFAC Violation, including, without limitation, the requirements of the Anti-Terrorism Regulations (including the "freezing" and/or "blocking" of assets).

8.22 **Operations and Maintenance Program.** For purposes of this Section, the term "Lawful Hazardous Substances" means Hazardous Substances located in, on or under the Property, the presence of which does not violate any Hazardous Substance Laws and which are not required to be removed, remediated, abated, cleaned up, or otherwise remedied under any Hazardous Substance Laws (such as non-friable encapsulated asbestos contained in construction materials or elements of the Improvements). In the event that (i) on or before the Deed of Trust Date, Lender has approved in writing the existence of Lawful Hazardous Substances; or (ii) subsequent to the Deed of Trust Date, Borrower discovers for the first time the existence of Lawful Hazardous Substances, then (a) Borrower shall promptly adopt and implement a commercially reasonable operations and maintenance program for the control and monitoring of such Lawful Hazardous Substances, which program shall comply with all applicable Hazardous Substance Laws and shall be prepared by a qualified, state-registered, professional environmental consultant reasonably acceptable to Lender (such program is referred to as the "O&M Program"); (b) the O&M Program adopted by Borrower shall include, among other things, (i) notification to Tenants of the Property regarding the existence of the Lawful Hazardous Substances in compliance with all applicable notification requirements under Hazardous Substance Laws; (ii) provisions for an ongoing operations and maintenance program which includes periodic reinspections and surveillance of the Lawful Hazardous Substances; (iii) measures to minimize any release of the Lawful Hazardous Substances; (iv) information and training systems and

programs for Borrower's Tenants and engineering and maintenance personnel; and (v) record keeping procedures by Borrower to demonstrate implementation of the O&M Program; (c) Borrower shall promulgate rules and regulations for Tenants of the Property to ensure compliance with the O&M Program by such Tenants, and Borrower shall incorporate such rules and regulations in all new leases and lease extensions and modifications affecting the Property; and (d) Borrower shall incorporate a form of indemnification in all new leases and lease extensions and modifications pursuant to which the Tenant under each such lease indemnifies Borrower and Lender against all claims, liabilities, costs and expenses (including attorneys' fees and costs) arising out of relating to such Tenant's failure to comply with the O&M Program. If (A) under the terms of this Section Borrower is obligated to prepare an O&M Program as of the date of recordation of this Deed of Trust; and (B) Borrower has not provided Lender with a written O&M Program acceptable to Lender as of the date of recordation of this Deed of Trust, then within thirty (30) days after written request given by Lender to Borrower at any time thereafter, Borrower, at its expense, shall cause a written O&M Program, reasonably acceptable to Lender in form and substance, to be prepared and delivered to Lender. If Borrower discovers for the first time the existence of Lawful Hazardous Substances after the date of recordation of this Deed of Trust and is required to prepare an O&M Program as a result of such discovery under the terms of this Section, then (1) Borrower shall inform Lender in writing of such discovery within thirty (30) days after the date of such discovery; and (2) Borrower, at its expense, shall cause a written O&M Program, reasonably acceptable to Lender in form and substance, to be prepared and delivered to Lender within thirty (30) days after Lender's request given at any time after Lender receives notice of such discovery or learns of the existence of such Lawful Hazardous Substances. Lender's request that Borrower cause an O&M Program to be prepared and delivered to Lender under this Section is referred to as an "O&M Request". No delay or omission of any kind by Lender in making an O&M Request shall constitute or be construed as a waiver by Lender of its rights to require Borrower to cause an O&M Program to be prepared and delivered to Lender in accordance with this Section, and Borrower shall at all times remain obligated to comply with all O&M Requests made by Lender, regardless of when any such request is made by Lender.

[Signatures appear on next page.]

BORROWER:

Oceanwide Plaza LLC,
a Delaware limited liability company,
formerly known as Tohigh Construction Investment, LLC,
a Delaware limited liability company

By: _____
Song Feng, President and CEO

NOTE: ALL SIGNATURES ON THIS DEED OF TRUST MUST BE NOTARIZED.

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

EXHIBIT "A"

LEGAL DESCRIPTION

THE REAL PROPERTY REFERRED TO HEREIN IS ALL THAT CERTAIN REAL PROPERTY LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

LOTS 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 AND 13 OF TRACT NO. 53384, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1279 PAGES 4 THROUGH 19 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS AMENDED BY A CERTIFICATE OF CORRECTION RECORDED MARCH 5, 2010 AS INSTRUMENT NO. 20100307746, OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND LYING WITHIN LOTS 1 THROUGH 6, INCLUSIVE, OF CARSON AND CURRIER'S SUBDIVISION OF BLOCK 89 OF ORB'S SURVEY, AS PER MAP RECORDED IN BOOK 55, PAGE 3 OF MISCELLANEOUS RECORDS, ALL OIL, GAS AND MINERAL SUBSTANCES, TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SUCH SUBSTANCES PROVIDED THAT THE SURFACE OPENING OF ANY WELL, HOLE, SHAFT, OR OTHER MEANS OF EXPLORING FOR, REACHING, OR EXTRACTING SUCH SUBSTANCES SHALL NOT BE LOCATED WITHIN THE CENTRAL BUSINESS DISTRICT REDEVELOPMENT PROJECT AND SHALL NOT PENETRATE ANY PART OR PORTION OF SAID PROJECT AREA WITHIN 500 FEET OF THE SURFACE THEREOF, AS EXCEPTED AND RESERVED IN THAT CERTAIN ORDER OF CONDEMNATION RECORDED MAY 22, 2001, AS INSTRUMENT NO. 01-876760, OFFICIAL RECORDS.

ASSESSOR'S PARCEL NOS. 5138-015-026, 5138-015-028, 5138-015-029, 5138-015-030, 5138-015-031, 5138-015-032, 5138-015-033, 5138-015-034, 5138-015-035, 5138-015-036, 5138-015-037 & 5138-015-038.

END OF LEGAL DESCRIPTION

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

EXHIBIT "B"

DESCRIPTION OF EXISTING LEASES

NONE – NO EXISTING LEASES

ACKNOWLEDGMENT

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

State of California,
County of Los Angeles)

On 06/19/2015 before me, Xuan Luo, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

XUAN LUO
COMM. #2101670
Notary Public - California
Los Angeles County
My Comm. Expires Feb. 28, 2019

Signature Xuan Luo (Seal)

EXHIBIT B

Lend Lease

Subcontract

Contractor Job Number	63865700
Subcontract Number	0300.000
Date	12/18/2015

CONTRACTOR: **("Contractor")**
Lend Lease (US) Construction Inc.
800 W 6th St, 16th Fl., Los Angeles, CA 90017

Attention:
K. Scott Weyman

SUBCONTRACTOR: WEBCOR CONSTRUCTION LP, JAM **("Subcontractor")**
~~Webcor Builders~~ D/B/A WEBCOR BUILDERS
1751 Harbor Bay Parkway, Ste 200
Alameda, CA 94502

Attention:
Jack Harrington
Tel: 510 748-1900

WORK: Concrete, Reinforcing and Tower Cranes

PROJECT: Oceanwide Plaza **("Project")**
1101 S Flower Street
Los Angeles, CA90015

OWNER: Oceanwide Plaza LLC **("Owner")**
865 South Figueroa Street, Suite 3150,
Los Angeles, CA 90017

ARCHITECT-ENGINEER: RTKL Associates Inc. **("Architect")**
333 South Hope Street, Suite C200, Los Angeles, CA90071

PRIME CONTRACT: Owner Agreement Dated: TBD **("Contract")**
Notice to Proceed 02/05/2016

SUBCONTRACT PRICE: One Hundred Twenty Two Million & % **("Price")**
Dollars
($ 122,000,000.00)

MONTHLY BILLING DATE: 19th **("Monthly Billing Date")**

RETAINED PERCENTAGE: 10% to 50% complete and 0% thereafter **("Retained Percentage")**
% or the maximum amount of retainage allowable by law, whichever is less

CHANGE ORDER OVERHEAD AND PROFIT: 15% maximum total for overhead and profit including and subcontractors / sub tier contractors % **("Profit Percentage")**

PAYMENT AND PERFORMANCE BONDS: Required ☒ Not Required ☐

(The above terms are incorporated by reference and are more fully explained below.)

Contractor, and Subcontractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

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ARTICLE 1, WORK

The term "**Work**" means: (i) the furnishing and performance of all labor and materials by Subcontractor, at or for the benefit of the Project which is within the general scope of this Subcontract (as that term is defined in Exhibit B) and the Contract Documents (as that term is defined in Schedule 1), or which can be reasonably inferred from the general scope of this Subcontract or the Contract Documents; (ii) unless specifically expressly excepted, the furnishing by Subcontractor of all labor, material, equipment, supplies, plant, tools, scaffolding, hoisting, temporary facilities, transportation, superintendence, inspections and temporary construction of every nature; (iii) that which is to be produced and supplied pursuant to this Subcontract; and (iv) the obligation of Subcontractor to visit the Project site, and to fully acquaint and familiarize itself with the site, surrounding and subsurface conditions and the character of the operations to be carried on at the site, and make such investigations as Subcontractor may deem fit or as may be prudent for Subcontractor to fully understand the facilities, physical conditions and restrictions attending the Work. All Work shall be completed strictly in accordance with the requirements of this Subcontract and the Contract Documents.

The Contract Documents are available for examination by Subcontractor at all reasonable times at the office of Contractor. Subcontractor represents and agrees that it has carefully examined and understands the Contract Documents relevant to the Work; has adequately investigated the nature and conditions of the Project site and locality; has familiarized itself with conditions affecting the difficulty of the Work; and has entered into this Subcontract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Contractor.

The Contract Documents are to be treated by Subcontractor as "scope" documents which indicate the general scope of the Work in terms of the architectural design concept, the overall dimensions, the type of structural, mechanical, electrical, utility, and other systems, and an outline of major architectural elements. As "scope" documents, the Contract Documents do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. It is the intent of this Subcontract that Subcontractor is to furnish for the Price all items required for proper completion of the Work. Subsequently issued documents may more completely detail certain requirements of the Work, at the option of the Architect, for the purpose of further defining the Work, but there is no obligation to issue such additional documents.

As a part of its obligation to provide and perform the Work, Subcontractor recognizes its responsibility to furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work; (i) organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; (ii) keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents; (iii) maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Contractor and shall not be changed without the consent of Contractor; (iv) enforce discipline and order among Subcontractor's employees and not to employ at the Project any unfit person or anyone not skilled in the task assigned; (v) provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed; and (vi) submit to Contractor the names, responsibilities and titles of the principal members of Subcontractor's staff.

Subcontractor shall be bound to Contractor by the terms and conditions of the Contract Documents, as the same shall be applicable to the Work and this Subcontract, and hereby assumes toward Contractor all of the duties, obligations and responsibilities that Contractor has by the Contract Documents assumed toward the Owner. Subject only to the terms of Article 27, nothing herein shall be construed to be a binding agreement to arbitrate any dispute arising hereunder, notwithstanding any provision to the contrary contained in the Contract Documents.

Subcontractor hereby irrevocably grants Contractor a license to use all shop drawings, designs, and deliverables provided by Subcontractor on the Project for Contractor's purposes on the Project. Such license extends, without limitation to all shop drawings, CAD drawings, submittals to governmental or quasi-governmental authorities, product approvals, fabrication processes and the like, which are in any way necessary or desirable for the performance of the Work ("**Granted Licenses**"). This Subcontract shall constitute conclusive evidence of the granting to Contractor of the Granted Licenses by Subcontractor.

ARTICLE 2, PRICE

Contractor shall pay to Subcontractor for the satisfactory performance and completion of the Work and performance of all the duties, obligations and responsibilities of Subcontractor under this Subcontract, the sum set forth above as the Price, subject only to additions and deductions as expressly provided in this Subcontract. To the extent that the Work is to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth in Exhibit D, based on actual quantities determined in accordance with the Contract Documents and this Subcontract. The Price and all unit prices shown in Exhibit D shall be deemed to include all costs of Subcontractor's performance of the Work as set forth in the Contract Documents, including, but not limited to, the costs of labor, supervision, services, materials, equipment, tools, scaffolds, hoisting, transportation, storage, insurance, taxes, and all overhead and profit.

ARTICLE 3, PROGRESS PAYMENTS

Within ten (10) days after the date of transmission of this Subcontract to Subcontractor, Subcontractor shall submit to Contractor for Contractor's approval a detailed schedule showing a proper cost breakdown (with a proper share of associated overhead and profit) of the Price according to the various line items, or parts, of the Work, for use only as a basis for verifying Subcontractor's applications for payment or supporting Contractor's applications for payments under the Contract Documents.

On or before each Monthly Billing Date, Subcontractor shall submit to Contractor, in such form and supported by such data (including bills of sale and applicable insurance) as Contractor may require, a progress payment application showing the value of the Work installed ("**Completed Work**"), plus the value of the material and equipment for incorporation in the Work suitably stored and insured (to the satisfaction of Contractor and Architect) at the Project site or other approved location ("**Stored Work**"), as of such date if, and only if, the Contract Documents provide for payments to Contractor on that basis. Subcontractor shall also furnish to Contractor, with Subcontractor's first Application For Payment, a list of all companies, entities, and individuals supplying labor or materials for the performance of the Work ("**Furnisher Information Schedule**"). Such Furnisher Information Schedule shall be updated with every Application For

Payment. By submitting each Application for Payment, Subcontractor shall, by such submission, certify and represent that all representations and/or certifications made by the Subcontractor in this Subcontract remain true and accurate. Within seven (7) days after receiving a progress payment from Owner under the Contract Documents, Contractor shall make a progress payment to Subcontractor equal to the value of the Completed Work and Stored Work as of the corresponding Monthly Billing Date, to the extent approved by Contractor and allowed and paid by Owner on account of the Work, and so long as all other conditions of payment are met under Article 5, below, and after deducting (a) all previous payments, (b) current retainage (meaning a reserve equal to the Retained Percentage times the allowed value of Completed Work and Stored Work, plus any additional reserve provided for herein) and (c) all charges or backcharges for services, materials, equipment, or other items furnished or otherwise chargeable to Subcontractor. To the fullest extent permitted by law, Contractor and/or Contractor's surety or sureties shall have no liability or responsibility for any amounts due or claimed to be due Subcontractor for any reason whatsoever except to the extent that Contractor has actually received funds from Owner specifically designated for disbursement to Subcontractor. Receipt of these funds by Contractor shall be an absolute condition precedent to Subcontractor's right to receive payment under the Contract Documents or any payment bond. In the event of any conflict between the Contract Documents, any payment bond and this provision, this provision shall govern. With regard to the foregoing, Subcontractor: (i) agrees that the Price shall be a non-recourse obligation; and (ii) waives Subcontractor's right to assert any claim, demand, right, or cause of action against Contractor and/or Contractor's surety or sureties for any portion of the Price (unless and to the extent that Contractor actually receives funds from the Owner attributable to the Work).

Contractor shall review each Application for Payment together with such supporting documents as required under Article 5 of this Subcontract and as otherwise requested by Owner or Contractor. Contractor shall then approve, modify or reject, in whole or in part, such Application for Payment. Contractor reserves the right to advance the date of any payment (including final payment) due or to become due under this Subcontract if, in its sole judgment, it becomes desirable to do so.

Subcontractor shall not be entitled to any payment until this Subcontract has been properly executed and all documents and information to be furnished by Subcontractor have been supplied to Contractor.

Unless otherwise directed or authorized, in writing, by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Subcontractor and its subcontractors and suppliers, shall be in electronic format and shall be submitted to Contractor using the Textura® CPM payment management system. Subcontractor shall be responsible for the fees and costs owed associated with Subcontractor's use of the Textura CPM payment management system. Subcontractor shall include a similar provision in its subcontracts and purchase orders.

ARTICLE 4, FINAL PAYMENT

A final payment, consisting of the unpaid balance of the Price, shall be made within thirty (30) days after the last of the following to occur: (a) satisfactory completion of the Work by Subcontractor, (b) unqualified acceptance thereof by the Architect and Owner, (c) full final payment by Owner to Contractor under the Contract Documents on account of the Work, (d) furnishing of evidence satisfactory to Contractor that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (e) delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors and (f) delivery of a general release, in a form satisfactory to Contractor, executed by Subcontractor running to and in favor of Contractor and Owner, and such other parties as Contractor may require. To the fullest extent permitted by law, Contractor and/or Contractor's surety or sureties shall have no liability or responsibility for any amounts due or claimed to be due Subcontractor for any reason whatsoever except to the extent that Contractor has actually received funds from Owner specifically designated for disbursement to Subcontractor. Receipt of these funds by Contractor shall be an absolute condition precedent to Subcontractor's right to receive payment under the Contract Documents or any payment bond. In the event of any conflict between the Contract Documents, any payment bond and this provision, this provision shall govern. With regard to the foregoing, Subcontractor: (i) agrees that the Price shall be a non-recourse obligation; and (ii) waives Subcontractor's right to assert any claim, demand, right, or cause of action against Contractor and/or Contractor's surety or sureties for any portion of the Price (unless and to the extent that Contractor actually receives funds from the Owner attributable to the Work).

Acceptance by Subcontractor of Final Payment shall constitute a release of Owner and Contractor of and from all liability for all things done or not done or furnished or not furnished in connection with the Work, and for every act, omission, or neglect, if any, relating to or arising out of the Project. As a condition of final payment, Subcontractor shall also execute and deliver a general release to Contractor naming Owner and Contractor, said general release to be in such form as Contractor may provide.

ARTICLE 5, PAYMENT CONDITIONS

Subcontractor will receive the payments made by Contractor and Subcontractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors and others responsible for the Work for which such payments are made, including sufficient funds so that all taxes and insurance applicable thereto are also paid. Subcontractor shall first apply all progress payments as trustee to satisfy all obligations Subcontractor has incurred due to the Work.

Subcontractor shall, as often as requested by Contractor, furnish such information, evidence and substantiation as Contractor may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by Subcontractor in connection with the Work and all payments made by Subcontractor on account thereof. Subcontractor shall also furnish, as required by Contractor in its sole discretion, such partial or final lien waivers or releases as Contractor deems necessary to ensure that Subcontractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If required by Contractor, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Moreover, no prior failure of Contractor to require such releases and waivers shall limit Contractor's right to require them subsequently.

Contractor reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies,

an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Subcontractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Subcontract, including retainage and exclusive of backcharges, are insufficient to complete the Work; (c) to reimburse Contractor for any backcharges incurred as a result of any act or omission by Subcontractor hereunder; (d) to protect Contractor from the possible consequences of any other breach or default by Subcontractor hereunder; or (e) to secure Contractor with respect to any breach or default by Subcontractor or its affiliates, parent company and subsidiaries under any other agreement.

Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty or improper work or materials. To the extent that payment is requested for any Work which requires the preparation of construction documents which are maintained on electronic media, no payment shall be due until delivery of the data for such construction documents in a format which is acceptable to Contractor.

Subcontractor shall at all times cooperate, in the course of its performance of the Work and of the Contract Documents, with any lending entity or entities providing financing for the Project and shall agree in writing to all changes and modifications to the Contract Documents which are requested by such entity or entities that do not impose any substantial additional burdens on Subcontractor or materially reduce or limit Subcontractor's rights. Subcontractor shall supply such information and certifications as reasonably may be required from time to time by the aforesaid lending entity or entities in order that Owner can satisfy conditions to lender's obligations to make advances upon Owner's construction loan.

As an additional condition precedent to any payment (including, but not limited to, final payment) under this Subcontract, Subcontractor shall provide to Contractor on electronic media copies of all drawings, shop drawings, CAD documentation and discs, and other documents prepared by Subcontractor, or prepared at Subcontractor's direction, in connection with the performance of the Work, whether or not submitted to Contractor or Owner in connection with the Work.

To the extent not expressly prohibited by law, Subcontractor stipulates and agrees that it shall not be entitled to any interest on amounts due and owing but unpaid including, without limitation, any pre-judgment or post-judgment interest provided for by statute, and Subcontractor expressly waives any and all rights to same.

ARTICLE 6, TIME

TIME IS OF THE ESSENCE in the Subcontractor's commencement, prosecution and construction of the Work. Therefore, Subcontractor shall be liable for all direct and consequential damages arising out of Subcontractor's breach of this Subcontract. Subcontractor shall: (a) submit to Contractor within ten (10) days of the date of transmission of this Subcontract to Subcontractor a detailed, proposed schedule for the Work for Contractor's use in preparing an overall progress schedule for the entire Work and its several parts under the Contract Documents; (b) begin the Work promptly upon Contractor's order to do so; (c) coordinate and perform the Work, and its several parts, diligently and promptly and in such order and sequence as Contractor may from time to time direct and as will assure its efficient and timely commencement and prosecution and will not cause Delay to the completion of the Work and its several parts or to the completion of the Project and its several parts, and (d) furnish at all times sufficient, qualified and competent forces and supervision, and adequate, conforming and usable materials, equipment, plants, tools and other necessary things, to achieve progress according to Contractor's current progress schedule, including any specific schedule for Subcontractor's Work attached hereto as Schedule 2, and any revisions thereof by Contractor. The term ("**Delay**") as used above and elsewhere in this Subcontract means: delay, disruption, loss of productivity, inefficiency, suspension, stoppage, obstruction, impact or hindrance to the commencement, prosecution or completion of the Work, the Project, or the several parts of either, for any cause whatsoever, whether or not (i) anticipated or foreseeable, (ii) caused by cumulative impact or otherwise, (iii) concurrent with other sources of Delay, or (iv) on or off a critical path. The term "Delay" shall include reference to individual as well as multiple instances and periods of Delay.

Without limiting the generality of the foregoing and in recognition of the completion dates contained herein and in the Contract Documents, Subcontractor shall: (a) submit, with its proposed schedule, information showing the time required to prepare and approve shop drawings, to fabricate and deliver materials and equipment, and to install the Work, (b) order (for manufacture or purchase and delivery) all materials required for performance of the Work as soon as possible in order to avoid Delays caused by strikes, transportation or unavailability; (c) furnish Contractor within thirty (30) days a list of major materials and equipment required for the Work, showing the name(s), address(es) and telephone number(s) of the supplier(s) and the date(s) on which such material and equipment is expected to be delivered to the Project site; (d) furnish Contractor, upon issuance, a copy of each major purchase order and subcontract (with price information deleted); (e) cause a qualified home office supervisory representative (while Subcontractor has forces at the Project site and for two weeks prior thereto) to attend weekly progress meetings; and (f) notify Contractor immediately by telephone and confirm in writing within seventy-two (72) hours, if Subcontractor finds that any item cannot be delivered as required to maintain Contractor's progress schedule. Subcontractor also agrees to be bound by such modifications to the Project schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is delivered in writing by Subcontractor within forty-eight (48) hours of the occurrence of such meeting.

The Work shall be performed during regular working hours except that, in the event of emergency or when necessary to perform the Work in accordance with the requirements of Article 6 of this Subcontract, Work shall be performed at Subcontractor's cost and expense (including Contractor's standby and other general conditions costs) on night shifts, overtime, Saturdays, Sundays, holidays and at other times, if permission to do so has been obtained in writing from Contractor. Without limiting the requirements of the preceding sentence, if the progress of the Work or of the Project has been Delayed by any fault, neglect, act, or failure to act of Subcontractor or any of its subcontractors or suppliers, Subcontractor shall work such overtime, at Subcontractor's cost and expense as aforesaid, as Contractor shall deem necessary or desirable to make up for all time lost and to avoid Delay in the completion of the Work or the Project. The

failure by Contractor to direct Subcontractor to engage in such overtime work shall not relieve Subcontractor of the consequences of its Delay.

Contractor may direct acceleration of the Work in order that it may be performed in advance of the schedules, time requirements and Project requirements described in Article 6 hereof. If so directed, Subcontractor shall increase its staff or work overtime, or both. Subcontractor will not be entitled to additional compensation for work performed outside of regular working hours, except as authorized and accepted in writing by Contractor. Provided that Subcontractor is not in default under the Subcontract, and Contractor has issued the aforesaid authorization, there shall be added to the Price an actual out-of-pocket amount equal to : (i) additional wages actually paid, at rates which have been approved in advance in writing by Contractor; (ii) taxes imposed by law on such additional wages; and (iii) premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime which exceeds $500.00 in any one week shall be invalid unless confirmed in advance in writing by Contractor's Project Manager, it being understood that Contractor's Superintendent shall not have authority to authorize such overtime which exceeds $500.00 in any one week.

ARTICLE 7, EXTENSIONS OF TIME

If Subcontractor claims an extension in the completion time requirements by reason of a change in the Work, Subcontractor shall give Contractor written notice thereof within seventy-two (72) hours after the occurrence of the conditions giving rise to such event. This written notice shall be given by Subcontractor before proceeding with the Work. No such request for an extension of time shall be valid unless written notice is given as required above. After delivering such written notice, Subcontractor shall proceed to execute the Work, even though the time extension has not been agreed upon.

Subcontractor acknowledges that Delay without fault on its part are reasonably foreseeable and that the time and cost impacts thereof are fully included in the Subcontract Price and completion time requirements. Should Subcontractor be delayed without fault on its part, and by reason of causes which would entitle the Contractor to an extension of time under the Contract, then Subcontractor shall be entitled to an extension of time only to perform the Work which shall be equal to the extension of time to which the Contractor is entitled and granted by the Owner but no claim for extension of time on account of Delay shall be allowed unless a claim in writing for delay is presented to Contractor with reasonable diligence but in any event not later than seventy-two (72) hours after the commencement of such claimed delay. The entitlement to an extension is absolutely conditioned upon Subcontractor's timely submission of the aforesaid written notice. Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, whether direct, indirect or cumulative, on account of any Delay for any cause whatsoever, whether or not foreseeable and whether or not anticipated including, but not limited to, causes that would entitle the Contractor to an extension of time under the Contract, and agrees that the sole right and remedy therefor shall be an extension of time in accordance with the foregoing paragraph.

Moreover, Subcontractor shall not be allowed an extension of time unless Subcontractor has established to Contractor's satisfaction that the delay claimed by Subcontractor is not waived hereunder and is to a portion of the Work on the critical path of the Work schedule and that Subcontractor could not have reasonably anticipated such delay.

ARTICLE 8, CHANGE ORDERS

Owner has reserved the right under the Contract Documents to require Contractor to make changes in the Work, including additions thereto and deletions therefrom. Additionally, Contractor reserves the right under this paragraph to require Subcontractor to make changes in the Work, including additions thereto and deletions therefrom, even though of a totally different character from that now required under this Subcontract. Without notice to any surety and without invalidating this Subcontract, Contractor may from time to time, by written order ("**Change Order**") to Subcontractor, make changes in the Work to the same extent and in the same manner as may be required of Contractor by Owner under the Contract Documents. Subcontractor shall thereupon perform the changed Work in accordance with the terms of this Subcontract and the Change Order. In the event that Subcontractor is obligated hereunder to provide a payment or a performance bond, or both, under this Subcontract, the penal sum of such bonds shall automatically be deemed to be increased by any increase in the Subcontract Price.

Upon request of Contractor, and in time and manner sufficient to permit Contractor to comply with its obligations under the Contract Documents, Subcontractor shall submit a written proposal for any applicable Price and time adjustment attributable to the changed Work, detailed as Contractor or Owner may require, supported by and conforming to the requirements of the Contract Documents.

Where a Change Order is issued pursuant to a change required by the Owner, the Price shall be adjusted by the net amount of any direct savings and direct cost plus Profit Percentage attributable to the Change Order, and the time for performance of the Work may be adjusted according to the Contract Documents, subject, however, in each case to the following limitations: (a) the Price and time adjustments hereunder shall be limited to the amount and extent of adjustments actually allowed Contractor under the Contract Documents (less, in the case of Price, any overhead, profit or similar markup allowed by Owner for Contractor's account); (b) where the Work affected by Change Order is the subject of unit prices under Exhibit D, the Price adjustment shall be limited to the amounts obtained by applying such unit prices to the actual increase or decrease in the quantity of units due to the change; and (c) the amount allowable for all overhead and profit shall be limited to the product obtained by multiplying the Profit Percentage by the net amount of Subcontractor's direct savings and direct cost.

As used in this Subcontract, Subcontractor's direct savings and direct cost shall mean and be limited to the actual amount of the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; bond premiums if and to the extent actually increased; and actual rent not greater than the rent charged in the locale or reasonable value of Subcontractor-owned equipment and machinery.

If the parties are able to agree upon the amount of the Price adjustment and the extent of any time adjustment, such adjustments shall be set forth in the Change Order, which shall be accepted by Subcontractor. If the parties are unable to agree upon such adjustments, Contractor may elect to issue the Change Order to Subcontractor directing such work to be per-

formed by Subcontractor and any adjustments to Price or time shall be subject to ultimate determination in accordance with this Subcontract; and Subcontractor shall, nonetheless, proceed immediately with the changed Work. Subcontractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Contractor at Contractor's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to Contractor upon its request, shall constitute an acceptance on Subcontractor's part of the Contractor's determination of the direct savings and direct cost of such changed Work. In no event shall Subcontractor proceed with changed Work without a Change Order issued pursuant to this Article 8 and Contractor shall not be liable for any additional costs incurred or Delay encountered in the performance of such changed Work without such a written Change Order.

Subcontractor acknowledges that multiple changes, including changes to the commencement, durations and sequence of the Work or portions thereof, are reasonably foreseeable on construction projects, and that multiple Change Orders may be issued in connection with the Work. Subcontractor hereby assumes the risk of Delay and the indirect and/or cumulative cost (if any) resulting from the aggregation of executed Change Orders issued in connection with the Work, and agrees not to make, and hereby waives, any claim for damages on account of any such cost.

ARTICLE 9, NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given when delivered personally to the party, the next day if sent by overnight mail by a nationally recognized courier service, or three (3) days after being sent by registered or certified mail, postage prepaid. All such notices shall be addressed to the party at its address and to the attention of the representative specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address and/or representative to which notices to it should be sent.

ARTICLE 10, BONDS

If so indicated on page 1 hereof, Subcontractor, within ten (10) days of date of transmission of this Subcontract to Subcontractor, shall furnish performance, and labor and material payment bonds each for one hundred percent (100%) of the Price, said bonds to be on Contractor's standard bond forms (attached hereto as Exhibit F) and with sureties satisfactory to Contractor. The premiums on such bonds shall be paid by Subcontractor, or paid directly by Contractor to Subcontractor's surety and deducted from amounts due or to become due to Subcontractor, and are included in the Price. Subcontractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly. Irrespective of whether Subcontractor is required to provide performance, and labor and material surety bonds under the terms of the Subcontract, Contractor shall have the right from time to time during the course of the Work to require Subcontractor to furnish bonds for one hundred percent (100%) of the Price (with sureties and in form attached hereto as Exhibit F and amount acceptable to Contractor) covering the faithful performance of the Subcontract and the payment of all obligations arising thereunder. Such bonds shall be furnished within ten (10) days after Subcontractor has been given written notice of such requirement by Contractor.

ARTICLE 11, INSURANCE

Before commencing the Work and until completion and final acceptance thereof by Owner, Subcontractor shall obtain and maintain, at its expense, at least the insurance coverage specified in Exhibit C attached hereto, all from companies and in form and substance acceptable to Contractor.

As a condition to any payment for the Work, Subcontractor shall furnish a certificate, satisfactory to Contractor, from each insurance company showing the required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days' written notice thereof to Contractor or as otherwise required by the Contract Documents. The certificate shall name Contractor, Owner and any other parties required by the Contract Documents as additional insureds under the policies required in Exhibit C. The terms and conditions of insurance to be provided by Subcontractor are described in Exhibit C. Neither Owner nor Contractor nor any other additional insureds, nor their agents, employees or assigns, shall be liable to Subcontractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described in Exhibit C. The failure of Subcontractor to obtain the insurance required therein prior to the commencement of the Work shall not be deemed a waiver of such requirements or of any rights or remedies that Owner or Contractor may have.

Subcontractor hereby acknowledges its obligation for any loss to its Work, including stored materials, paid for or not.

Subcontractor waives all rights against the Owner, Contractor, Architect and any separate contractors for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work or Subcontractor's equipment, except such rights as Subcontractor may have to the proceeds of such insurance. Subcontractor shall require similar waivers from its subcontractors, suppliers, sub-subcontractors, agents and employees of any of them, by appropriate agreements, each in favor of the other parties enumerated herein.

ARTICLE 12, INDEMNITY

To the full extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, expense, or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act.

Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Contractor involving the manner or sufficiency of the performance of the Work (including attorneys' fees), Subcontractor shall upon request of Contractor promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense. To the

fullest extent permitted by law, Subcontractor shall indemnify and save harmless Contractor as well as anyone to be defended, indemnified and held harmless by Contractor and its or their agents, servants and employees, from and against any liability, loss, damage, or expense (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity) arising out of or related to such claim, suit, action or proceeding. Nothing in Article 12 shall be construed to require any indemnification which would make Article 12 void or unenforceable or to eliminate or reduce any indemnification or rights which the Contractor or any other party indemnified hereunder have by law.

ARTICLE 13, ASSIGNMENT

Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any substantial part of the Work, without the prior written consent of Contractor. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Contractor gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the Work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors as Subcontractor is for its own acts and omissions and those of its agents, servants and employees. Additionally, nothing herein shall prevent any guarantor or surety of Subcontractor from enforcing any right hereunder after acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgment shall constitute an admission by any guarantor or surety of its obligations under its agreement of guarantee or suretyship.

Before any subcontractor or supplier is employed by Subcontractor, the name of such subcontractor or supplier shall be submitted in writing to Contractor, and no subcontractor or supplier shall be employed unless acceptable to Contractor. Each subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the subcontractor or supplier were the Subcontractor. Subcontractor shall cause its subcontractors and suppliers to comply with the Contract Documents. Subcontractor shall be responsible for all of the acts, work, material and equipment of its subcontractors and suppliers and all persons either directly or indirectly employed by any of them.

Subcontractor (and its successors and assigns) hereby assigns to Contractor all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Subcontractor for performance of any part of the Work which assignment will be effective upon acceptance by Contractor in writing and only as to those subcontracts and purchase orders which Contractor designates in writing. It is agreed and understood that Contractor may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by Subcontractor to Contractor and Contractor's assigns. Contractor may assign this Subcontract at any time without the consent of Subcontractor, or Subcontractor's payment and performance sureties or guarantors, if any.

ARTICLE 14, COMPLIANCE

Subcontractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, wages, discrimination and equal employment opportunity and pay any fines or penalties imposed for any violations thereof ("**Legal Requirements**"). Subcontractor shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Subcontractor, its agents, servants and employees. Subcontractor shall receive and respond to, and shall defend, indemnify and save harmless Contractor and Owner, as well as anyone to whom Contractor is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from any such violations and any citations, assessments, fines, or penalties resulting therefrom. Without limiting the foregoing, Subcontractor will appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

By executing this Subcontract, Subcontractor represents and warrants to Contractor that the Work, when completed, will comply fully with all applicable building and safety codes, regulations and construction requirements imposed or enforced by any governmental agencies and in existence on the date of execution of this Subcontract, without regard to any errors, omissions or deficiencies in the drawings and specifications; and Subcontractor shall furnish samples of all materials and component parts to be used as test specimens. Subcontractor shall furnish labor and facilities at the Project site as necessary in connection with testing and inspection services.

Except as otherwise expressly specified in the Contract Documents or elsewhere in this Subcontract, Subcontractor shall pay for all laboratory services, tests, testing laboratories, agencies, professional engineers, engineering inspections and reports required by the Contract Documents, the Architect, or Contractor. Testing laboratories and professional engineers shall be subject to Contractor's prior written approval. Without limiting the provisions herein, the cost of testing laboratories, agencies, and/or engineers for the convenience of Subcontractor in its scheduling and performance of the Work, or related to remedial operations or possible deficiencies, shall be borne by Subcontractor.

The observations of or participation by Owner, Architect, or Contractor in inspections or tests by persons other than Subcontractor shall not relieve Subcontractor from its obligations to perform the Work in accordance with the Contract Documents. Owner, Architect and Contractor, upon request, promptly shall have access to the Work, whether at the Project, in storage or in manufacture or preparation. Subcontractor shall provide proper and safe facilities for such access and for inspection at the Project site, at the place of storage or elsewhere. Subcontractor has given a license to exercise self-help. If the specifications or any legal requirements require any portion of the Work to be tested or reviewed, Subcontractor shall give Contractor timely written notice of such test or review.

Subcontractor shall comply with and cooperate with other subcontractors, Contractor, Architect, and Owner in complying with legal requirements, including but not limited to OSHA requirements. Among other things, Subcontractor shall be responsible for performing corrective work within abatement periods, appealing from decisions or orders, requesting extensions

on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Contractor to fully protect the rights and interests of Owner, Architect, and Contractor with respect to possible, threatened or pending proceedings or orders.

Subcontractor shall comply, and shall cause each of its lower-tier subcontractors to comply, with the requirements of Schedule 4 attached hereto to the fullest extent required by applicable law. Subcontractor shall further maintain all records appropriate to document such compliance.

Subcontractor acknowledges that this Subcontract and/or lower tier subcontracts or purchase orders may be used by Contractor to meet certain obligations related to contracting with diverse enterprises, including without limitation, any SBE, DBE, WBE, SDVE, MBE, LBE, HUB or other diverse enterprise (as those terms are hereinafter defined). Therefore, if Subcontractor has identified that it is a diverse enterprise, then Subcontractor, by executing this Subcontract, represents and warrants that: (1) Subcontractor is a certified SBE, DBE, WBE, SDVE, MBE, LBE, HUB, or other diverse enterprise, as applicable, under the Owner's program or applicable agency's program; (2) Subcontractor will maintain its certification for the duration of this Subcontract; (3) Subcontractor will perform the Work, and manage and supervise its employees in performance of the Work, itself (i.e., through its own work force and without assistance from Contractor); (4) Subcontractor will provide equipment and supplies necessary for the performance of the Work; (5) without limiting the foregoing, Subcontractor will perform a "commercially useful function" as defined in any law or regulation applicable to this Subcontract, and if no such law or regulation is applicable, then as defined in 49 C.F.R. § 26.55; and (6) unless Subcontractor obtains Contractor's prior written consent, Subcontractor will not subcontract any of the Work (including the purchase of materials) except to a subcontractor and/or vendor that is a certified SBE, DBE, WBE, SDVE, MBE, LBE, HUB or other diverse enterprise, as applicable and that satisfies the requirements of (1) through (5) above. Whether or not Subcontractor is a diverse entity, if any of the Work will be performed by a subcontractor and/or vendor of any tier that is a diverse enterprise, then Subcontractor warrants and represents that any such subcontractor and/or vendor, as applicable, will be a certified SBE, DBE, WBE, SDVE, MBE, LBE, HUB or other diverse enterprise and will satisfy the requirements of (1) through (6) above. Subcontractor shall expressly require any such subcontractor and/or vendor that is a diverse enterprise, or that contracts with a lower tier subcontractor and/or vendor that is a diverse enterprise, to make all of the foregoing representations and warranties as to itself and as to each such lower tier diverse enterprise, as applicable, and to require the same from all lower tier subcontractors and/or vendors.

Subcontractor must, within one business day, notify Contractor in writing should any of the following occur at the time of executing this Subcontract or thereafter:

(a) any representation provided by Subcontractor herein, in the Subcontractor's prequalification response regarding integrity, ethics or compliance matters, or in the Subcontractor's proposal or any Supplement to any of the foregoing was either untrue at the time of execution of this Subcontract by Contractor or thereafter becomes untrue during the term of this Agreement;

(b) An owner, officer or major stockholder of Subcontractor has ever been indicted or convicted of a felony or any criminal conduct;

(c) Subcontractor or any of its owners (other than owners of shares of a publicly traded entity) or principals (which for purposes of this Subcontract shall be deemed to include its parent(s) and affiliates and the officers, partners, members, directors, officers of each of them) (collectively, "**Related Entities**") has ever been debarred, suspended, found to be nonresponsible, or otherwise been prevented by a public agency from pursuing work; or been the target of a governmental investigation over the prior five (5) years;

(d) Subcontractor becomes aware (or should have become aware exercising reasonable diligence) that one of its subcontractors or vendors of any tier, or any of such subcontractor's or vendor's Related Entities has ever been indicted, convicted of a felony or a misdemeanor involving dishonesty, debarred, or the target of a governmental investigation;

(e) Subcontractor or its subcontractors or vendors of any tier, or any of such subcontractor's or vendor's Related Entities knowingly participates in the activities of any organized crime group identified as such by any federal, state or municipal law enforcement or investigative agency (collectively and individually, "**Law Enforcement Agency**"); or permits or allows any person identified by any Law Enforcement Agency as being employed by or associated with any such organized crime group, to participate in any of its business affairs;

(f) The family members of Subcontractor's principals or owners are or have been employed by Contractor or its Related Entities; or

(g) Subcontractor or any of its subcontractors or vendors of any tier, or any of such subcontractor's or vendor's Related Entities lose its certification as a DBE, MBE, SBE, SDVE, LBE, WBE, HUB or other diverse enterprise.

The failure to timely provide such written notification shall be considered a material breach of this Subcontract not subject to cure by Subcontractor. Contractor shall have the right to terminate this Subcontract for convenience immediately upon receipt of such notice from Subcontractor.

Upon submission of each Application for Payment by Subcontractor and otherwise upon Contractor's written request, Subcontractor shall re-certify any or all of its initial representations and/or certifications made in connection with its Work under this Subcontract, including, without limitation, those provided by Subcontractor herein or in the Subcontractor's proposal or any supplement thereto.

Contractor and Subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

Subcontractor shall not cause Contractor to be in breach of its Code of Conduct, which document is available at *http://www.lendlease.com/ worldwide/about-*

us/~/media/E5EBFB8B52A84095AC21F935E0B7F2BB.ashx or if not available online shall be made available upon request.

ARTICLE 15, SAFETY

Subcontractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Work is its responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish and implement safety measures, policies and standards conforming to those required or recommended by governmental or quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, any requirements imposed by the Contract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibility therefor.

Subcontractor shall continuously protect the Work, other work, and the property of Contractor, Owner and others from damage, injury or loss arising in connection with the Subcontractor's performance of the Work. Neither Owner nor Contractor shall be responsible for any loss or damage to the Work or the property of Subcontractor, however caused, until after final acceptance thereof by Owner and final payment therefor. Likewise, neither Owner nor Contractor shall be responsible for loss of or damage (however caused) to materials, tools, equipment, appliances and other personal property of Subcontractor used in the performance of the Work. Subcontractor shall remove all snow and ice as may be required or requested for the proper protection and prosecution of the Work. Subcontractor shall provide and maintain adequate protection against weather so as to protect the Work from injury or damage.

Subcontractor shall enforce Contractor's instructions regarding signs, advertisements, fires, smoking, alcoholic beverages, and the possession of firearms by any person at the Project site. Subcontractor, as necessary for the Work, shall provide flagmen, erect proper barricades and other safeguards, and post danger signs and other warnings as warranted by hazardous and existing conditions.

Subcontractor shall promptly report in writing to Contractor and Subcontractor's insurance carriers all accidents arising out of, or in connection with, the performance of the Work, whether on or off the Project site, which caused death, bodily injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages occur, the incident shall be reported to Contractor immediately by telephone or in person.

Subcontractor shall provide to Contractor a written site specific Safety and Health Program prior to the commencement of any Work on the Project. The Safety and Health Program shall address tasks to be performed on the Project with attendant risk analysis and have appropriate controls and safeguards to prevent injury and illness. Contractor will review the Safety and Health Program prior to the start of the work. Any questions, comments or inquiries by Contractor as to the adequacy of this program must be completely addressed by Subcontractor before Work is started.

Subcontractor must have a Safety Orientation Program for all of its new Project workers. Documentation of this orientation is required for the Project. Weekly safety meeting with the workers of Subcontractor and its subcontractors of any tier are also required with evidence of the meeting results being supplied to Contractor.

ANSI compliant hard hats, eye protection and high visibility vests are required on the Project. Subcontractor must have a Safety Disciplinary Program and Contractor will use a safety disciplinary system with the Subcontractor.

Guardrails are to be provided by Subcontractor at all working places and other locations where persons or materials could fall more than six (6) feet. Where this cannot be physically achieved, suitable and sufficient fall protection devices that do not rely on individuals must be provided and used by Subcontractor to establish a safe place of work. Harnesses and personal protective equipment must be used by Subcontractor as a last resort. The decisions made and options implemented must be clearly detailed by Subcontractor in its written site specific Safety and Health Program.

Free-standing scaffold towers used externally by Subcontractor must not be higher to the top platform level than three (3) times the minimum base dimension unless secured to a permanent structure. For internal use only, the height to platform may rise to 3.5 times the minimum base dimension. Wheels must be locked when towers are in use. No person is permitted to remain on a tower platform while a tower is being moved.

Powered cranes, hoists, aerial platforms and scissor lifts provided by Subcontractor must have a competent driver that is certified by a qualified third party. Additionally, the above items must be certified by a qualified third party as safe to use.

Subcontractor must comply in full with all applicable environment, health and safety ("**EH&S**") local and national legislation, including all OSHA regulations. In circumstances where there is a conflict between local or national legislation and this Article 15, the higher (more protective) requirement shall prevail.

All persons working for or under Subcontractor on suspended scaffolds/cradles/gondolas must wear and use appropriate fall prevention equipment so as to protect them effectively, at all times when they are at risk from any failure of any part of the scaffold/cradle/gondola, including its suspension system.

Holes, shafts and edges from or through which persons could fall a distance of more than 6 feet must be clearly marked by Subcontractor with signage or other means and must be adequately protected by covers or barriers provided by Subcontractor so as to prevent falls of persons and materials.

All temporary electrical circuits provided and used by Subcontractor must include a Residual Current Device, Earth Leakage Circuit Breaker or Ground Fault Circuit Interrupter at source.

Adequate lighting must be provided by Subcontractor to enable safe access to and egress from every place on a site where persons are liable to work. This is in addition to task lighting.

To the fullest extent permitted by law and/or by collective bargaining agreements, if applicable, Subcontractor shall comply with Contractor's Drug Policy that includes reasonable-suspicion testing and post-accident testing. If any employee of Subcontractor should test positive under those conditions, they will be sent, at Subcontractor's sole expense, to a drug rehabilitation program and be subject to testing during rehabilitation and upon their return to Work. By executing this Subcontract, Subcontractor hereby certifies that its employees have successfully completed a drug test within one month prior to beginning Work on the Project site. Prior to commencing the Work, Subcontractor

must submit to the Contractor a copy of Subcontractor's group testing policy.

The Project has a zero tolerance, no smoking policy. Any employee of Subcontractor found smoking at the Project shall be removed from the Project immediately and shall be barred from any other Contractor projects. If any employee of Subcontractor is found smoking, Subcontractor shall be fined $5,000.00 for the first offense and $10,000.00 for each subsequent incident. All workers employed by Subcontractor at the Project must sign an acknowledgement that they are fully aware of the Project's zero tolerance, no smoking policy.

ARTICLE 16, CLEAN UP

Subcontractor shall, at its own expense: (a) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily or other basis requested by Contractor; (b) at the completion of the Work in each area, sweep and otherwise make the Work and its immediate vicinity "broom-clean;" (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

ARTICLE 17, TEMPORARY FACILITIES

Temporary facilities and services shall be provided in accordance with Schedule 3 attached hereto.

ARTICLE 18, QUALITY

Subcontractor shall at all times provide first-quality, new materials (unless otherwise specified in the Contract Documents) and workmanship conforming to the Contract Documents requirements and be in accordance with the best standards of the construction industry where the Project is located. Subcontractor shall at all times provide proper facilities and an opportunity for the inspection of the Work by Contractor, Architect and Owner and their representatives. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor or Architect, proceed to take down and remove all portions of the Work which Contractor or Architect shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents or this Subcontract and shall replace the same with proper and satisfactory Work and make good all work damaged or destroyed thereby. Contractor's failure to discover or notify Subcontractor of defective or nonconforming Work at the time the Work, or any portion thereof, is performed or completed shall not relieve Subcontractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom. If the Owner elects to accept defective or nonconforming Work, Contractor may require an appropriate adjustment in the Price to the extent required of Contractor.

Subcontractor shall use all necessary means to discover and to notify Contractor in writing of any defect in any part of the Project upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Subcontractor should proceed with the Work, Subcontractor shall be considered to have accepted and be responsible for such condition unless Subcontractor shall have been directed by Contractor to proceed over Subcontractor's written objection to Contractor.

ARTICLE 19, GUARANTEES AND WARRANTIES

Subcontractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall, at its expense, make good any faulty, defective, or improper parts of the Work discovered within one (1) year from the date of acceptance of the Project by Architect and Owner or within such longer period as may be provided in the Contract Documents or Legal Requirements. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents. No Guarantee Period shall be construed to limit any warranty given by Subcontractor hereunder.

Performance of the aforementioned guarantee obligations shall be deemed to be a material component of Subcontractor's contractual obligation to perform the Work. This Subcontract shall not be considered completely performed until all guarantee obligations hereunder are fully satisfied. Performance bonds required of Subcontractor shall include the performance of guarantee obligations and warranty obligations and shall not contain clauses limiting the time to sue upon said bonds for breach of the guarantee or warranty.

ARTICLE 20, SUBMITTALS

Subcontractor shall immediately prepare or obtain and promptly submit to Contractor shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. Approval of drawings or other submittals by Contractor or Architect shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or of its responsibility for the proper matching of the Work to contiguous work.

Subcontractor shall promptly submit all shop drawings and samples as to cause no Delay in the Work or the progress of the Project. Subcontractor shall submit all shop drawings and samples through the Contractor to the Owner for the Architect's review. By submitting shop drawings and samples, Subcontractor represents and warrants that it has determined and verified all materials, field measurements, and field construction criteria pertaining thereto, has checked and coordinated this information with the Work and the Contract Documents, and that the Subcontractor shall fully guarantee and warrant the Work in accordance with this Subcontract and the Contract Documents. Any submission that, in Contractor's opinion, is incomplete, contains errors or has not been fully and properly checked, may be returned unreviewed by Contractor for revision and resubmission.

In reviewing shop drawings, Architect/Engineer need not verify dimensions and field conditions. Architect/Engineer will review shop drawings and samples only for conformance with the design concept of the Work and for general detailing. Architect and Contractor's review shall not be construed as a complete check nor shall it relieve Subcontractor from its responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents. Architect's or Contractor's review shall not relieve Subcontractor from responsibility for errors in shop drawings; responsibility for proper fitting of the Work, the necessity of furnishing any Work required by the Contract Documents which may not be indicated on shop

drawings when reviewed; or the necessity of providing sufficient quantities of items.

ARTICLE 21, PERFORMANCE

The Work shall be performed and furnished under the direction and to the satisfaction of Architect and Contractor, but Subcontractor shall not thereby be relieved of its obligation to supervise the Work, using its best skill and attention, or its obligation to perform the Work as provided for herein. Subcontractor shall be bound by the interpretations and decisions of Architect and Owner to the same extent as Contractor may be bound thereby under the Contract Documents. No certificate issued or payment made to Subcontractor nor any partial or entire use or occupancy of the Project site shall be an acceptance of any Work not in accordance with this Subcontract or the Contract Documents or be deemed evidence of proper performance of the Work, either in whole or in part, or be construed as an acceptance of defective workmanship or improper materials.

Subcontractor shall notify and obtain the approval of Contractor before the arrival of forces or delivery of materials and equipment to the Project site, before any substantial change in its forces, and before leaving the Project site for any reason.

Subcontractor shall promptly and carefully check all Contract Documents and notify Contractor of any discrepancies or conflicts before performing any Work, and Subcontractor shall be responsible for any extra costs resulting from its failure to do so. Subcontractor shall cooperate with Contractor and other subcontractors in the preparation of coordination drawings where required by Contractor. Subcontractor shall take field measurements and verify field conditions and compare such field measurements and field conditions with the Contract Documents before activities are commenced. Errors, inconsistencies or omissions discovered are to be reported to Contractor at once. Any work done by Subcontractor with respect to any portion of the Work affected by such error, discrepancy, conflict, misunderstanding, or variance will be at Subcontractor's own risk and Subcontractor shall bear all costs and loss arising therefrom.

Neither Architect nor Contractor nor Owner shall be responsible for: construction means, methods, techniques, sequences or procedures of Subcontractor; safety precautions and programs of Subcontractor; the acts or omissions of Subcontractor; or the failure of Subcontractor to carry out the work in accordance with the Contract Documents.

The Subcontractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project site with materials and equipment. Subcontractor shall not perform any portion of the Work outside the areas of the Project site owned or controlled by Owner or designated as part of the Project site in the Contract Documents unless Subcontractor gives thirty (30) days advance written notice to Contractor, and Owner is able to obtain permission from the appropriate parties to proceed with the Work or to permit access pursuant to Owner's agreements with the owners and/or tenants of said areas. Any work permitted outside of the Project site owned by Owner shall be scheduled in a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. Subcontractor shall prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original conditions immediately upon completion of such operations unless otherwise specified.

ARTICLE 22, LIENS

To the extent not expressly prohibited by law, Subcontractor shall not suffer or permit any lien or other encumbrance to be filed or to remain of record as a claim against the building or the Project site or against any monies due or to become due for any Work performed or materials furnished by, to or on behalf of Subcontractor, or any of its subcontractors or suppliers; nor shall Subcontractor suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of, Subcontractor or any of its subcontractors or suppliers. Subcontractor shall defend, indemnify and save harmless Contractor, Contractor's sureties and Owner from any lien or claim of lien filed or maintained by any laborer, materialman, subcontractor, or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Contractor or from Contractor to Subcontractor. Without limiting the foregoing, Subcontractor shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or otherwise within such time as provided under the Contract Documents or ten (10) days from the date of receipt by Subcontractor of written notice from Contractor or Owner to remove the lien, whichever period is shorter.

ARTICLE 23, PATENTS

Subcontractor shall pay all royalties and license fees applicable to the Work. Subcontractor shall defend, indemnify and hold Owner, Architect and Contractor harmless of, from and against any and all suits, demands and claims for infringement of any patent rights except to the extent that Owner may have assumed responsibility therefor under the Contract Documents. The foregoing exception shall be inapplicable if Subcontractor had or should have had reason to believe the design, process, or product infringed upon a patent and failed to give written notification to Contractor of same.

ARTICLE 24, LABOR

Subcontractor shall employ labor that is compatible with the labor of other subcontractors; shall take all steps necessary to avoid labor disputes; and shall be responsible for any Delays and damages to Owner caused by such disputes. Subcontractor agrees that where the Work is Delayed by strikes, slow-downs, or similar interruptions or disturbances (including cases where Subcontractor's employees are engaged in a work-stoppage solely as a result of a labor dispute involving Contractor or others and not in any manner involving Subcontractor), Contractor shall have the rights and remedies provided for in Article 26. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, and Subcontractor shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly prosecution of the Work. Subcontractor shall not permit anyone under the age of 18 to perform the Work or to have access to the Project site. Subcontractor shall comply with all instructions by Contractor relating to the ingress and egress of its employees, materialmen and suppliers to the Project and shall take all necessary steps to restrain and enjoin any illegal picketing, demonstrating, violence, or similar activity against Subcontractor at the Project. Subcontractor agrees that if any provision of the Contract Documents conflicts with any agreement among members of a trade association, or with a union or labor council which regulates the work to be performed by a particular trade, Subcontractor shall reconcile such conflict without Delay or damage to Owner or Contractor. For the avoidance of

doubt, Subcontractor shall pay union workers only for hours actually worked as reflected in accurately recorded time sheets. Nothing herein shall be deemed to limit Contractor's rights under Article 26 hereof.

ARTICLE 25, DAMAGE

Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented, or used by Subcontractor, or anyone employed by or through Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as Subcontractor deems desirable with respect to such property. Contractor shall not be liable or responsible for any loss or damage to the Work, and Subcontractor shall be responsible for the correction or restoration of any such loss or damage to the Work, or to the work of Contractor or any other subcontractor, resulting from the operations of Subcontractor, or its subcontractors, agents, servants, or employees hereunder. Subcontractor shall take all reasonable precautions to protect the Work from loss or damage prior to acceptance by Owner.

ARTICLE 26, DEFAULT

Should Subcontractor at any time:

(a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder;

(b) cause Delay to the Project or any activity necessary to complete the Project;

(c) become insolvent;

(d) fails to properly and promptly make payment for all materials and services provided in the performance of the Work; or

(e) fail in the Contractor's opinion in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract (including, but not limited to, those contained in Article 14 – Compliance and Article 15 - Safety hereof), then in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall have the right, in addition to any other rights and remedies provided by the contract or by law, after forty-eight (48) hours written notice from Contractor to Subcontractor, or after such shorter period, with or without notice, as may be deemed by Contractor to be appropriate under the circumstances to exercise any one or more of the following remedies:

(i) require that Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday Work) and additional shifts as necessary to overcome the consequences of any Delay attributable to Subcontractor's default;

(ii) attempt to remedy the default by whatever means Contractor may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder;

(iii) terminate this Subcontract, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and by itself or through others take possession of the Work, and all materials, equipment, facilities, plants, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and securing to Contractor the payment of its costs (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under the Subcontract and for the breach thereof, it being intended that Contractor shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site (and Contractor may at any time file this Subcontract as a financing statement under applicable law); or

(iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Architect and full payment therefor by Owner, Contractor shall promptly pay Subcontractor the undisbursed balance of the Price, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Price, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Contractor.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Subcontractor's guarantors, surety, or sureties agree to be bound to Contractor with respect to such remedies notwithstanding any provision of the bonds provided pursuant to Article 10 hereof.

Except as limited by this Subcontract, Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract by Contractor. Any default by Contractor shall be deemed waived unless Subcontractor shall have given Contractor written notice thereof within five (5) days after the occurrence of such default. Subcontractor shall be entitled to stop the Work or terminate this Subcontract **only** (a) on account of Contractor's failure to pay an amount to Subcontractor which is paid by Owner to Contractor under Subcontractor's Application for Payment that is approved in accordance with the Contract Documents and (b) where a good faith reason does not exist as to the withholding of such payments claimed by Subcontractor ("**Contractor's Default**"). Subcontractor shall not be entitled to stop the Work on account of a Contractor's Default unless such Contractor's Default shall have continued for more than ten (10) days after Contractor's receipt of written notice of such Contractor's Default from Subcontractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

Subcontractor shall not be entitled to terminate this Subcontract except for a Contractor's Default which shall have continued for at least an additional thirty (30) days after (a) Subcontractor shall have stopped Work in accordance with this paragraph and (b) Contractor shall have received thirty (30) days written notice of Subcontractor's intention to terminate this Subcontract. Article 26 represents the Subcontractor's sole right to stop the Work or terminate this Subcontract.

Should any termination for default under Article 26 (iii) be determined to be invalid, improper or wrongful, such termina-

tion shall be deemed to have been a termination for convenience as provided in Article 28 below.

Subcontractor shall not be entitled to receive any further payment until the Work shall be wholly completed to the satisfaction of Contractor and shall have been accepted by Contractor and Owner, at which time, if the unpaid balance, if any, of the Price at the time of Subcontractor's default shall exceed the costs and expenses incurred in completing the Work and curing Subcontractor's default, such excess shall be paid to Subcontractor; but if such costs and expenses shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. Such costs and expenses shall include not only the cost of completing the Work to the satisfaction of Contractor and Owner and of performing and furnishing all labor, services, materials, equipment and other items required therefor, but also all losses, damages, costs and expenses, whether direct or consequential, including, without limitation, attorney's and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by Owner or Contractor by reason of or resulting from any default of Subcontractor.

ARTICLE 27, DISPUTES

In the event of any dispute between Subcontractor and Contractor arising out of or relating to this Subcontract, or the breach thereof, which involves the correlative rights and duties of Owner, the dispute shall be decided in accordance with the Contract Documents, and Subcontractor, its suppliers, subcontractors and its guarantors, surety, or sureties, shall be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any decisions or determination made under the Contract Documents by an authorized person, board, court, arbitration, or other tribunal. Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights. Subcontractor shall be solely responsible for the preparation of any information or testimony hereunder unless Contractor notifies Subcontractor in writing of its intention to provide attorneys and provide for the presentation of any case governed by this paragraph, in which case Subcontractor shall have the duty to cooperate with Contractor.

If a dispute should arise between Contractor and Subcontractor under or relating to the Subcontract, or the breach thereof, which does not involve the correlative rights and duties of Owner and is not, therefore, controlled by the foregoing provision, then either party may seek redress of its grievances as to such disputes at law or in equity in a court of competent jurisdiction located in the State in which the Project is located.

Subcontractor acknowledges that the Contract Price is sufficient compensation for all risks assumed by Subcontractor herein and related hereto. Accordingly, Subcontractor agrees not to make, and hereby waives, any claim, cause of action or legal theory of any nature except as permitted by this Subcontract, and covenants not to sue based upon any other legal theory or to seek extra-contractual damages, including but not limited to claims based upon tort, quasi-contract, *quantum meruit*, unjust enrichment, equity, consequential damages, cardinal change, abandonment or cumulative impact, whether by reason of act or omission of Contractor or otherwise.

In the event of any dispute as to whether any item or portion of the Project Work is within the scope of the Work to be performed by Subcontractor or any dispute as to whether Subcontractor is entitled to an extra payment, Subcontractor shall continue to proceed diligently with the performance of the Work, this Subcontract, and any disputed Work, pending any resolution. The existence of a dispute shall not be grounds for any failure to perform by Subcontractor nor limit the right of Contractor to proceed to remedy any default by Subcontractor.

ARTICLE 28, EARLY TERMINATION

If Owner terminates the Contract or stops the Work for a reason other than the sole default of Contractor, Contractor may terminate this Subcontract or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the Price, shall be limited to the corresponding rights and remedies available to Contractor under the Contract Documents, and controlled by Article 26 above. Should this Subcontract be terminated for default, Subcontractor shall assign all purchase orders and subcontracts to Contractor if Contractor, in its sole and absolute discretion, requests such assignments. Subcontractor agrees to incorporate such provisions in its agreements with suppliers and subcontractors to effectuate this Article 28. Nothing herein shall create any duty on the part of Contractor to accept the assignment of any purchase order or subcontract hereunder.

Further, in its sole discretion and without notice to any guarantors, surety, or sureties, Contractor may, at any time prior to final payment, terminate this Subcontract for its convenience upon the giving of written notice to Subcontractor. In no event shall Subcontractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed. If terminated for convenience, Subcontractor shall be entitled to be paid all costs of all Work provided hereunder including reasonable and necessary costs of termination, as determined in accordance with the method set forth in Article 8 above, together with the Profit Percentage attributable to the costs so determined. Payment shall be made in accordance with and subject to the requirements of Article 4.

Without limitation, the following obligations, among others, of Subcontractor shall survive the termination of the Subcontract whether pursuant to this Subcontract: warranties and guarantees of Work performed; indemnity; payment of taxes, damages, losses and expenses; certifications; delivery of manuals, data on electronic media and as-built drawings; correction of Work performed; removal of liens; and cooperation with the construction lender.

ARTICLE 29, SETOFF

29.1 If Subcontractor is, or hereafter begins, performing any work for Contractor other than the Work under the Subcontract and the unpaid balance of the Price becomes insufficient to complete such Work or compensate Contractor for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Contractor, in its sole discretion and judgment, to setoff any of Contractor's claims against any funds due, or which may become due, Subcontractor under any other agreement with Contractor, or any subcontract on any other project. No refusal or failure of Contractor to exercise their rights hereunder shall constitute the basis of any right or claim against Contractor.

ARTICLE 30, MISCELLANEOUS

(a) All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the law of the State in which the Project is located, applicable to the validity, performance, or interpretation, as the case may be, of the Contract Documents. In the event that any term, provision, or part of the Subcontract is held to be illegal, invalid or unenforceable, such term, provision, or part shall be deemed severed from the

Subcontract and the remaining terms, provisions and parts shall remain unaffected thereby. Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

(b) This Subcontract, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof. Subcontractor agrees that any claims against Contractor, irrespective of an alleged breach by Contractor of the Contract Documents, shall be based, nonetheless, upon this Subcontract and the Price, and shall in no event be based upon an asserted fair and reasonable value of the Work performed.

(c) This Subcontract may not be changed in any way except as herein provided or by a writing signed by a duly authorized officer or agent of each party. No requirement of this Subcontract may be waived except in writing signed by a duly authorized officer of the waiving party. This provision may not be waived orally by Contractor.

(d) The provisions of this Subcontract and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Subcontractor shall govern.

(e) As to any claim which arises out of Subcontractor's performance which is also caused by the acts or omissions of any third party, Subcontractor's liability hereunder shall be joint and several.

(f) The failure of Owner or Contractor to insist upon performance or strict performance of any of the terms, covenants or conditions of this Subcontract or the Contract Documents shall not be deemed a waiver of any rights or remedies that Owner or Contractor may have; shall not be deemed to constitute an amendment of this Subcontract; and shall not be deemed a waiver of any subsequent breach or default by Contractor of any of the terms, covenants, or conditions of this Subcontract.

(g) Subcontractor acknowledges, agrees and understands that: (i) Contractor's employees are prohibited from accepting, directly or indirectly, anything of value (such as money, goods or a service) from Subcontractor; (ii) a business courtesy, such as a gift, contribution or entertainment, can not be accepted by Contractor's employees under circumstances that might cause a conflict of interest or create the appearance of impropriety; (iii) gifts of nominal value (generally $300.00 or less) may be accepted by Contractors' employees if reasonable under the circumstances of the business relationship and consistent with customary business practices in the industry (e.g., accepting a lunch or dinner invitation, tickets to theater or sporting events, or nominal value gifts at the holidays); (iv) Contractor's employees are not allowed to accept materials from Subcontractor that are outside of arrangements that are made available to all Contractor's employees; (v) Contractor's employees are strictly prohibited from accepting a cash gift or a check in any amount; and (vi) Contractor's employees are strictly prohibited from accepting, directly or indirectly, anything of value (such as money, goods or a service) from any federal, state or local government official and/or government employee.

IN WITNESS WHEREOF, the parties have duly executed this Subcontract as of the date first above written.

~~Webcor Builder~~ WEBCOR CONSTRUCTION LP, D/B/A WEBCOR BUILDERS.
Subcontractor

By: _____
(Signature)

Printed Name: Jes Pedersen

Title: President / CEO

Attest: _____
JACK HARRINGTON

Lend Lease (US) Construction Inc.

By: _____
(Signature)

Printed Name: ~~K. Scott Weyman~~ Mike Corcoran

Title: SVP - GM

Attest: _____
SARAH LANDSBERGER,

Subcontractor Check ONE: ☐ Corporation ☒ Partnership/Joint Venture ☐ Individual

If your company qualifies as one or more of the business enterprise types listed below, please check the appropriate box(s) and list certifying agency(s) below:

☐ DBE (Disadvantaged Business Enterprise)
☐ MBE (Minority Business Enterprise)
☐ LBE (Local Business Enterprise)
☐ SBE (Small Business Enterprise)
☐ Other (Specify)
☐ SDVE (Small Disabled Veteran Enterprise)
☐ WBE (Women Business Enterprise)
☐ HUB (HUBZone Business Enterprise)
☒ N/A (Does not apply to your firm)

Certifying Agency(s):

_____

_____

_____

_____

If your company is a Minority Business Enterprise (MBE), please check the appropriate box:

☐ African American
☐ Aleutian Indian
☐ Asian
☐ Hispanic
☐ Native American
☐ Other (Specify)

LICENSING: By executing this Subcontract, Subcontractor affirms that it holds the following contractor license(s) applicable to the Work as required by the state in which the Project is located.

State of CALIFORNIA License No(s). 899242 (If none required, enter "N/A")

License Classification(s): C-8, B, A

Expiration Date: 6-30-2017

Payments will not be processed without complete licensing information.

*Subcontractor's Federal Employer Identification No.: 20-8399744

(If no E.I. Number, enter business owner's Social Security No.) *Per IRS 3402(s), 31% of each payment is required to be withheld and remitted to the IRS if E.I. Number or Social Security Number is not provided. This withholding amount will be in addition to Subcontract retainage.

For Lend Lease (US) Construction Inc. Use:

☐ License Verified ☐ Not Required By: _____ Date: _____

SCHEDULE 1 — CONTRACT DOCUMENTS

The Contract Documents referred to in Article 1 and elsewhere in this Subcontract consists of the Subcontract and the following:

The Contract Documents, sometimes referred to collectively as the "**Subcontract,**" are listed below and shall constitute the Subcontract.

- This Subcontract with Schedules 1, 2, 3 and 4
- The Contract
- Exhibit A (Drawings/Specifications) consisting of 27 pages, dated 07/28/2015
- Exhibit B (General Scope of Subcontractor's Work) consisting of 22 pages, dated 02/09/2016
- Exhibit C (Insurance Requirements) consisting of 31 pages
- Exhibit D (Unit Prices) consisting of 3 pages, dated 10/22/2015
  (Note: The setting forth of unit prices shall not be construed to require Contractor to engage Subcontractor to perform the work for which unit prices are listed.)
- Exhibit E (Alternates) consisting of 1 pages, dated 10/22/2015
- Exhibit F (Bonding Requirements and Required Bond Forms) consisting of 7 pages
- Exhibit J (Project Safety Program Requirements) consisting of 90 pages
  - State Addendum consisting of 2 pages
  - Additional Exhibits:

    Rider to Subcontract - Rider #1 (Project Specific) consisting of 4 pages (Dated 12/18/2015)

    Rider to Subcontract - Rider #2 (Trade Specific) consisting of 4 pages (Dated 12/18/2015)

    Exhibit B.1 (Specific Scope of Subcontractor's Work) Consisting of 27 Pages dated 02/02/2016

    Exhibit G (Project Schedule) consisting of 18 pages.

    Exhibit H (Billing Instructions) Consisting of 8 Pages

    Exhibit K (Logistics) Consisting 25 Pages

    Exhibit L (Sustainability) Consiting of 23 Pages

    Exhibit M (BIM Requirements) Consisting of 19 Pages

    Exhibit N (Daily Logs, Certified Payrolls, M/WBE/OBE and EEO Requirements & Procedures) Consisting 112 Pages

The Subcontractor is bound by the terms of all Contract Documents.

SCHEDULE 2 — PERFORMANCE SCHEDULE

Pursuant to this Subcontract and without limiting the provisions thereof, Subcontractor shall perform the Work and its several parts according to the following specific schedule, and as the same may be revised from time to time by Contractor:

SCHEDULE 3 — TEMPORARY FACILITIES

All temporary Project site facilities and storage, sheds, shanties, material storage rooms, field offices, power, hoists, scaffolding, cold weather protection, etc. ("**Temporary Facilities**") required in performing the Work shall be furnished by Subcontractor except as provided herein. Subcontractor agrees to furnish, at Subcontractor's expense, sufficient Temporary Facilities for the efficient performance of the Work. Subcontractor agrees to place its Temporary Facilities in locations designated by Contractor. When it becomes necessary, in the opinion of the Contractor, for Subcontractor to provide Temporary Facilities, Subcontractor will do so in an expeditious manner and at no additional cost. Temporary Facilities shall be equipped with fire extinguishers and shall be of fireproof material only, such as concrete, gypsum block, rated drywall, or sheet metal. The sole exceptions to Subcontractor's obligations to provide Temporary Facilities are:

The Temporary Facilities furnished by Contractor shall be without charge to Subcontractor except as otherwise indicated above.

In connection with their furnishing of the Temporary Facilities indicated above, Contractor shall not be liable for conditions beyond the reasonable control of Contractor which may Delay or otherwise interfere with the availability of such Temporary Facilities to Subcontractor. Unless otherwise expressly indicated, the Temporary Facilities furnished by Contractor shall not be for the exclusive use of Subcontractor, but shall be shared by others performing work on the Project. Contractor, therefore, reserves the exclusive right to schedule the use of any Temporary Facilities in accordance with its determinations as to the needs of the Project and shall incur no liability as a result thereof. If either party from time to time furnishes the other a crane, hoisting equipment, or other machinery or equipment, with or without an operator, for such party's exclusive use, then the using party shall at all times furnish adequate and competent supervision and direction therefor and shall be fully liable and responsible for safe and proper care, use and custody of such machinery or equipment.

SCHEDULE 4 – EMPLOYMENT ELIGIBILITY VERIFICATION

In addition to Subcontracts compliance with this Schedule, the provisions of this Schedule must be incorporated into any subcontract Subcontractor enters into in connection with the performance of the Work.

1. The Subcontractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, discrimination in employment, fair employment practices, immigration laws or equal employment opportunity, and whether or not provided for by the other Contract Documents, without additional charge or expense to the Contractor and/or Owner and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. Each requisition for payment shall constitute a representation and warranty that Subcontractor is in compliance with applicable law.

2. The Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations. The Subcontractor agrees to save harmless and indemnify Contractor and Owner, as well as any other parties Contractor is required to defend, indemnify and hold harmless, and their respective agents, servants and employees, from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including reasonable legal fees and disbursements, caused or occasioned directly or indirectly by the failure of the Subcontractor or its subcontractor(s) of any tier to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations therefore resulting from or in connection with the performance of Work.

3. The Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire persons who are not authorized to work in the United States. For all employees, employers are required to complete an Employment Eligibility Verification form I-9 which requires the prospective employee to produce documentation that establishes identity and employment eligibility. For more information visit www.uscis.gov, or speak to your attorney. Each subcontractor is solely responsible for properly completing Employment Eligibility Verifications for their own employees.

4. Subcontractor acknowledges represents and warrants that Subcontractor is aware of and understands IRCA (or any E-Verify requirement or other similar immigration law requirement where applicable), that Subcontractor is in compliance with IRCA (or E-Verify requirement or other similar immigration law requirement where applicable), and that Subcontractor is not knowingly employing workers who are not authorized to work in the United States. Subcontractor agrees that Subcontractor will not employ any worker under this Subcontract for whom Subcontractor has not completed and maintained verification. Subcontractor agrees that if Subcontractor acquires knowledge (constructive or otherwise), indicating that one of Subcontractor's workers on this Project may not be authorized to work in the United States, despite Subcontractor having conducted appropriate verification, that Subcontractor will exercise due diligence as required by law to confirm authorization status and take appropriate action which may include termination of employment. Subcontractor represents and warrants that they will not subcontract to or utilize labor sources that it knows or has reason to know violate IRCA (or E-Verify requirement or other similar immigration law requirement where applicable).

A. Additional Employment Eligibility Verification (E-Verify) where E-Verify is required by Federal Acquisition Regulations (FAR).

As prescribed in FAR Section 22.1803, Subcontractor and its subcontractors of every tier shall comply with the following provisions to the fullest extent required by law:

Employment Eligibility Verification (Jan 2009)

(a) *Definitions*. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR Section 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

"Employee assigned to the contract" means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at FAR Section 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

"Subcontract" means any contract, as defined in FAR Section 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

"United States", as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Subcontractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Subcontractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Subcontractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Subcontractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Subcontractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

(c) *Web site.*

Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site:

*http://www.dhs.*http://www.dhs.gov/E-Verifyhttp://www.dhs.gov/E-Verifygov/E-Verify.

(d) *Individuals previously verified.*

The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.*

The Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,000; and

(3) Includes work performed in the United States.

LEND LEASE (US) CONSTRUCTION INC. LICENSE NO. 483550

California
Addendum to Subcontract

1. The contingency for payment set forth in Articles 3 and 4 of the Subcontract shall not be applicable if Owner's nonpayment to Contractor is attributable to Contractor's breach of the Contract with the Owner and is not attributable to any breach of contract by Subcontractor. Nothing set forth in the Subcontract shall be construed to limit, impair or diminish any and all rights of the Subcontractor under the Lien Law of the State of California to file and enforce a mechanic's lien against the Owner's right, title, or interest, if any, or any right, title or interest, if any, of any other "owner" (as defined in the Lien Law) in and to the real property on which the project is being constructed, and improvements thereof. Solely for the purposes of filing and foreclosing a mechanic's lien on real property under the Lien Law of the State of California, there shall be deemed to be a valid and existing debt of the Contractor to Subcontractor for any payments to which the Subcontractor would be entitled to under the Subcontract or otherwise but for the Owner's failure to make payment to the Contractor. Therefore, the Subcontractor specifically agrees to look for payment or other satisfaction of the debt solely from (i) proceeds of foreclosure of any such mechanic's lien and/or (ii) funds actually received by Contractor from the Owner specifically designated for disbursement to the Subcontractor. Subcontractor specifically acknowledges and freely agrees to accept the risk that the Owner may not pay Contractor except as provided herein.

2. To the fullest extent permitted by law and as applicable to the Project, Subcontractor understands and acknowledges that it shall be subject to the provisions of California Civil Code Sections 896 et. Seq., that its Work shall meet or exceed the applicable standards set forth therein and that failure in this regard shall constitute, without limitation, a default under the Subcontract. In addition to the dispute resolution provisions of the Subcontract, which shall continue to govern any claims, disputes or controversies between Contractor and Subcontractor and not involving home buyers in the Project or the homeowners association for the Project (if any), Subcontractor further agrees to comply with dispute resolution provisions as agreed by and between Contractor and Owner or otherwise as required by law governing any claim, dispute or controversy relating to or arising out of the Subcontract and/or the Work, which involves a claim asserted by a home buyer in the Project and/or by the homeowners association for the Project. Subcontractor acknowledges that in connection with the sale to the public of homes at the Project, and/or the creation of, and/or the conveyance of common area to, the homeowners association for the Project, Contractor may adopt, offer to, or execute with, the Owner or the home buyers in the Project additional agreements or obligations to comply with California Civil Code Sections 896 et. Seq. or other applicable law. Subcontractor acknowledges and agrees that any and all claims, disputes and controversies between or among any home buyer, homeowners association, Contractor, and Subcontractor will be subject to the terms and conditions set forth in such agreements, if any, and Subcontractor agrees to be bound by and participate in any and all dispute resolution procedures, provisions and requirements set forth in such agreements, at Contractor's sole discretion. In the event that any such provisions are found to be unenforceable for any reason, Subcontractor agrees to be subject to, participate in, and be bound by any other dispute resolution procedure, provision or requirement binding on Contractor to which any claims, disputes or controversies involving any home buyer or homeowners association are submitted. The requirements of this paragraph shall survive the completion of the Subcontractor's Work and the earlier expiration or termination of the Subcontract.

3. To the fullest extent permitted by law and as applicable to the Project,, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, expense, or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), attributable to bodily injury to persons, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), or any other loss caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, destruction or loss is caused by the active negligence or willful misconduct of a party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provisions of any insurance contract, worker's compensation or similar act, or agreement issued by an admitted insurer as defined by the California Insurance Code. Nothing in Article 12 shall be construed to require any indemnification which would make Article 12 void or unenforceable or to eliminate or reduce any indemnification or rights which the Contractor or any other party indemnified hereunder have by law.

4. Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Contractor involving the manner or sufficiency of the performance of the Work (including attorneys' fees), Subcontractor shall immediately upon

written tender of such claim, suit, action or proceeding, or a portion thereof, by Contractor, assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense and shall elect to perform either of the following: (1) Defend the claim with counsel of its choice and maintain control of the defense for any claim to which the defense obligation applies; or (2) pay, within 30 days of receipt of an invoice from Contractor the allocated share of Contractor's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation, including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. If Subcontractor elects to defend under option (1), Subcontractor shall provide written notice of its election to Contractor within ten (10) days of receipt of written notice of the claim from Contractor and shall maintain a complete defense of Contractor, and Owner if so demanded by Contractor, of all claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability claims against Contractor, and Owner if so demanded by Contractor, resulting from Subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of Contractor or Owner, or any other party. Any vicarious liability imposed upon Contractor or Owner for claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor by Contractor, Owner, or claimant. All information, documentation, or evidence, if any, relating to Subcontractor's assertion that another party is responsible for the claim shall be provided by Subcontractor to Contractor.

5. If the Subcontract is for residential construction, as used in Title 7 (commencing with Section 895 of Part 2 of Division 2 of the California Civil Code), then, to the extent required by Section 2782[d] of the California Civil Code, nothing set forth in Article 12 of the Subcontract shall purport to indemnify and defend any builder (as defined in Section 911 of the California Civil Code) against liability for claims of construction defects to the extent such claims arise out of, pertain to, or relate to the negligence of the builder or the builder's other agents, servants, or other independent contractors who are directly responsible to the builder, or defects in design (if any) furnished by those persons; or to the extent such claims do not arise out of, pertain to, or relate to the scope of Work in the Subcontract. In the event that Subcontractor's indemnity obligation is so limited, Subcontractor agrees to provide defense and indemnity to said builder(s) to such lesser extent as is allowed by law, including, but not limited to, defense and indemnity from and against any claim, cost, loss, expense, or liability caused by, arising out of, pertaining to, related to, attributable to, or which may otherwise by equitably and or proportionally allocated to, the negligence, defect in design furnished by, willfulness, or other fault of the Subcontractor or its subcontractors or suppliers of any tier, or their agents, servants, or employees. If circumstances exist causing Subcontractor's indemnity obligations hereunder to be limited by operation of California Civil Code Section 2782(c), then Subcontractor shall still be required to immediately assume the full defense of any such builder as required elsewhere in the Subcontract; however, in such cases, and only in such cases, said builder shall, upon final resolution of claim, suit, action, or proceeding, reimburse Subcontractor for those defense expenditures which were caused by, were attributable to, or which were otherwise equitably or proportionally allocated to the negligence of, or defect in design (if any) furnished by, the builder or the builder's other agents, other servants, or other independent contractors who were directly responsible to the builder, or to the extent the claim, suit, action, or proceeding did not arise out of, pertain to, or relate to the scope of Work in the Subcontract.

6. Subcontractor agrees that Contractor has the authority to write up safety notices and the Subcontractor has the responsibility to observe and correct said conditions or acts in a timely manner. Contractor will issue safety citations to the Subcontractor upon non-compliance of acts or conditions. At the sole discretion of Contractor, a citation will be issued and, in the event that Subcontractor does not immediately correct said conditions or acts (or immediately commence such correction, which in any event shall be completed within a reasonable time after the issuance of said citation as determined within the sole discretion of Contractor), $500.00 will be backcharged to the Subcontractor. A second or subsequent infraction of or failure to timely correct a previously cited action or condition will result in the issuance of a repeated citation, where $1,000.00 or more (at the sole discretion of Contractor) for each subsequent infraction will be backcharged to the Subcontractor and/or removal of the Subcontractor's employee(s) from the site for the duration of the Project. Said backcharges will be withheld from the next requisition payment. The removal procedure may be expanded to include removal of a Subcontractor's entire work force where the Subcontractor does not demonstrate good faith effort.

RIDER TO SUBCONTRACT BETWEEN
LEND LEASE (US) CONSTRUCTION INC.,
AND WEBCOR CONSTRUCTION,
FOR THE OCEANWIDE PROJECT

The provisions of this Rider supplement or amend the terms and conditions of the above-referenced and attached Subcontract. To the extent that there are any conflicts or ambiguities between the provisions of this Rider and the terms and conditions of the Subcontract, the provisions of this Rider shall prevail. Unless otherwise defined herein, all definitions set forth in the Contract Documents shall apply to this Rider.

A. SUBCONTRACT

1. Cover Page, add the following to the Subcontract Price: "The parties agree that the entire Subcontract Price for the Work scope contained within this Subcontract equals **$122,000,000**. All parties agree that the Owner has authorized Contractor to authorize a not-to-exceed value of Work to be performed of **$5,000,000** to allow for timely start-up of Work pending final execution of the Prime Contract. If for any reason there is a delay to the execution of the Prime Contract, an additional authorization will be issued in writing to allow for Work to progress and billing to continue."

2. Article 1, Paragraph 5, Line 7, before "Subject only" insert "Subcontractor specifically agrees that this Subcontract incorporates the terms and conditions of the Contract Documents. Subcontractor shall adhere to the requirements of the Contract Documents and shall require each of its subcontractors and suppliers to likewise adhere to the requirements of the Contract Documents."

3. Article 3, add the following to the end: "Notwithstanding anything to the contrary contained herein, the Retained Percentage shall be 10%. However, with Owner and Contractor's approval, which shall not be unreasonably withheld, when the Work is fifty percent (50%) completed, Contractor, at its election, shall be entitled to withhold no additional retention from payments to Subcontractor. If approved by Owner and Contractor, such retention shall be paid upon completion of Subcontractor's Work."

4. Article 15, Paragraph 11, add the following to the end: "Subcontractor shall comply with the Environmental Requirements as defined and detailed in Section 10.3 of AIA A201 of the Contract."

5. Article 19, add the following to the end: "In addition to the Subcontractor's obligations under this Subcontract and any express or implied warranties or guaranties applicable to the Work, if, within one (1) year after the date of Substantial Completion of the Project or designated portion thereof or after the date for commencement of warranties established under this Section, or by terms of an applicable special warranty required by the Contract or Subcontract, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Subcontractor shall correct it promptly after receipt of written notice from the Contractor to do so unless the Contractor has previously given the Subcontractor a written acceptance of such condition. The Contractor shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Contractor fails to notify the Subcontractor and give the Subcontractor an opportunity to make the correction, the Contractor waives the rights to require correction by the Subcontractor and to make a claim for breach of warranty. If the Subcontractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Contractor, the Contractor may correct it in accordance with this

Subcontract. The Subcontractor agrees to require each subcontractor to assume the obligations of this Article 19 at subcontractor's sole cost and expense, with respect to Work performed by such subcontractor."

6. Article 21, Paragraph 3, add the following to the end: "Subcontractor shall be responsible to Contractor for acts and omissions of Subcontractor's employees, suppliers, consultants, subcontractors and their respective agents and employees, and all other persons or entities it retains to perform portions of the Work. Subcontractor shall be responsible for Work performed by Subcontractor or any Subcontractor party that is defective or contrary to the Contract Documents."

7. Article 24, add the following to the end: "If required by Owner, Subcontractor shall ensure that all on-site construction at the Project site (i) shall be performed solely by subcontractors employing craft workers represented by unions affiliated with the local and/or national Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO (collectively referred to as "AFL-CIO") and the Change to Win Coalition or any other generally recognized union in the area; (ii) all such employment shall conform to traditional craft jurisdictions in the area (the "Labor Covenant"). If required by Owner, Subcontractor shall include the foregoing Labor Covenant in each subcontract entered into by Subcontractor and shall require that all subcontracts of any tier include the Labor Covenant."

8. Insert the following new Section 30(h): "Except as required to complete the Work, Subcontractor shall treat all information, discussions, work papers, drawings, memoranda, and all materials relating to the Project and all information supplied to Subcontractor by Owner or Contractor as strictly confidential and proprietary information. Subcontractor shall not permit its release to other parties or make any public announcement or publicity releases, and such information shall not be used or discussed by Subcontractor, except as required to complete the Work, without Owner and Contractor's prior written approval in each instance.

   Subcontractor warrants and represents that Subcontractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner and Contractor, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Subcontractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications and other documents which the Subcontractor is permitted to retain under Section 1.5 of AIA A201 of the Contract Documents. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. Subcontractor shall not disclose to others that specific information was received from the Owner or Contractor even though it falls within the scope of one or more of those exceptions. The Subcontractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Subcontractor is required by any court of competent jurisdiction or legally constituted authority to disclose any such Owner or Contractor information, prior to any disclosure thereof, the Subcontractor shall notify Contractor and shall give the Owner or Contractor the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

9. Insert the following new Section 30(i):

"Pursuant to AIA A201 Section 5.3.1 of the Contract, Subcontractor acknowledges and agrees that this Subcontractor:

(a) preserves and protects the rights of the Owner under the Contract Documents with respect to the Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights;

(b) requires that such Work be performed in accordance with the requirements of the Contract Documents;

(c) subject to the provisions of Section 5.4.1 of AIA A201 of the Contract, the Contractor's interest in the Subcontract may be assigned to Owner or Owner's designee without any further consent or approval of the Subcontractor, which assignment shall become effective upon the Subcontractor's receipt of notification from Owner that (a) Contractor's services for the Project have been terminated, and (b) the assignment is effective;

(d) requires submission to the Contractor of applications for payment in reasonable time to enable the Contractor to apply for payment in accordance with the provisions of the Contract Documents;

(e) requires that all claims for additional costs, extensions of time or otherwise shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

(f) waives all rights the Contractor and Subcontractor may have against one another and the Indemnified Parties for damages caused by fire or other perils covered by the property insurance described in Section 11.3 of AIA A201 of the Contract or any insurance required to be carried by a Contractor Party under the Contract Documents, except such rights as they may have to the proceeds of such insurance held by the Owner under Section 11.3 of AIA A201 of the Contract, and requires their respective insurers to waive rights of subrogation against the Owner or any of the other Indemnified Parties;

(g) prohibits Subcontractor from assigning its rights and/or obligations under the Subcontract or from subcontracting the performance of any of its services under the subcontract except as agreed in writing by Owner and Contractor; provided that no assignment or subcontracting by the Subcontractor shall relieve Subcontractor of its duties and obligations under its agreement with the Contractor;

(h) incorporates those insurance requirements of Article 11 of AIA A201 of the Contract applicable to Subcontractors;

(i) names the Owner Parties as additional insureds on a primary, non-contributory basis (including coverage for ongoing and completed operations), as more particularly set forth in Article 11 of the AIA A201 of the Contract);

(j) names the Indemnified Parties as indemnified parties under any indemnities given in favor of Contractor in the Subcontract to the same extent that the Contractor is indemnified thereunder;

(k) provides that the Owner owns all drawings, specifications, computations, sketches, test data, survey results, models, photographs, renderings and other work product prepared by the Subcontractor;

(l) contains any confidentiality provisions set forth in the Contract Documents; and

(m) provides that Owner is an express third party beneficiary of this Subcontract."

Subcontractor acknowledges and agrees that the terms and conditions of this Rider to the Subcontract are exclusively for the **Oceanwide Project** and shall not be construed as a course of commercial dealing between the parties for future projects, if any.

DATED:

WEBCOR CONSTRUCTION LP, D/B/A WEBCOR BUILDERS.

~~**WEBCOR CONSTRUCTION**~~

By: _____
Name: Jes Pedersen
Title: President / CEO

LEND LEASE (US) CONSTRUCTION INC.

By: _____
Name: Mark Corcoran
Title: SVP - GM

RIDER TO SUBCONTRACT BETWEEN
LEND LEASE (US) CONSTRUCTION INC.,
AND WEBCOR CONSTRUCTION LP, D/B/A WEBCOR BUILDERS,
FOR THE OCEANWIDE PROJECT

The provisions of this Rider supplement or amend the terms and conditions of the above-referenced and attached Subcontract. To the extent that there are any conflicts or ambiguities between the provisions of this Rider and the terms and conditions of the Subcontract, the provisions of this Rider shall prevail. Unless otherwise defined herein, all definitions set forth in the Contract Documents shall apply to this Rider.

A. SUBCONTRACT

1. Article 3, Paragraph 2, Line 16, replace "seven (7)" with "five (5)"; Line 35, after the word "payment" insert the following: ", except if Owner's nonpayment to Contractor is solely attributable to Contractor's breach of its agreement with the Owner and is not attributable, in whole or in part, to any breach of contract by Subcontractor.".

2. Article 4, Paragraph 1, add the following to the end of the paragraph: "However, with Owner's written approval, Subcontractor may be entitled to all of its retention upon completion of its Work."

3. Article 6, First Paragraph, add the following after the second sentence: "Notwithstanding the foregoing or any other provision in this Subcontract to the contrary, the consequential damages arising from delays referred to in this Article 6 for which Subcontractor may be liable under this Subcontract shall not exceed one hundred percent (100%) of the Subcontract Price, as adjusted."

4. Article 7, add the following new paragraphs to the end of the Article:

   "Notwithstanding anything set forth in the Subcontract to the contrary, should Subcontractor be obstructed or delayed in the completion of the Work for causes for which neither it, nor its subcontractors or suppliers, are responsible, in whole or in part, and the delay causes an increase in the Subcontractor's cost of the performance of any part of its Work, Subcontractor shall be entitled to an equitable adjustment in the Contract Price provided and to the extent that: (1) the Prime Agreement provides for and Owner approves such equitable adjustment, (2) as a condition precedent, any amounts claimed to be due Subcontractor for delays shall be paid from funds actually received by Contractor from the Owner or such other subcontractor responsible for the delay and specifically designated for disbursement to the Subcontractor in accordance with Articles 3, 4 and 5 of the Subcontract, (3) Subcontractor complies with the notice requirements of Article 7 and (4) Subcontractor provides proof, satisfactory to Contractor, of its actual, reasonable and verifiable costs. If such claim for delay is not timely made by Subcontractor to the appropriate parties, it shall be deemed waived.

   Anything in the foregoing to the contrary notwithstanding, recovery by Subcontractor on any claim is expressly limited to the extent of any amounts actually paid by the Owner or other subcontractor to Contractor and directly attributable to Subcontractor's claim. Subcontractor shall continue the performance of all Work required by this Subcontract, whether or not a subject of any dispute or claim, pending resolution of any such dispute or claim. Notwithstanding anything in the Subcontract to the contrary, Subcontractor acknowledges and agrees that payment by the Owner or other subcontractor to Contractor is an express condition precedent to Contractor's liability and responsibility to pay any amounts to Subcontractor under this Article 7."

5. Article 12, add a new paragraph as follows:

   "The scope of Subcontractor's indemnification and hold harmless obligations to the Indemnified Parties, as well as any other parties which Contractor is required under the Contract Documents to indemnify and hold harmless, and their agents, servants and employee employees ("Indemnitees"), shall be to the extent that damages, injuries (including death), claims, losses, costs, expenses (including, without limitation, reasonable attorney's fees and disbursements) and liabilities are caused by, result from, or arise out of the Work, acts, omissions or breaches of contract by Subcontractor or its employees; its agents; its subcontractors, suppliers and/or materialmen of any tier; or anyone under its control. However, said scope shall not extend to damages, injuries (including death), claims, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and liabilities to the extent they are caused by, result from or arise out of the negligence or willful misconduct of the Indemnitees hereunder. The foregoing shall not limit Subcontractor's joint and several responsibilities, pursuant to this Article 12 or Paragraph (e) of Article 30, to the extent permitted by California law."

6. Article 22, insert the following in the beginning of the second sentence, "Provided Subcontract has been paid in accordance with this Subcontract,"

7. Article 24, Line 2, delete "take all steps necessary" and insert "use best efforts"; Line 3, after the words "labor disputes" insert ", as it pertains to Subcontractor's operations outside of their control".

8. Article 26, subsection (e)(ii) and (iii), replace "fifteen percent (15%)" with "five percent (5%)"; add the following at the end of the Article: "Notwithstanding the foregoing or any other provision in this Subcontract to the contrary, the consequential damages (including liquidated damages, if any) arising from delays referred to in this Article 26 for which Subcontractor may be liable under this Subcontract shall not exceed one hundred percent (100%) of the Subcontract Price, as adjusted."

Subcontractor acknowledges and agrees that the terms and conditions of this Rider to the Subcontract are exclusively for the **Oceanwide Project** and shall not be construed as a course of commercial dealing between the parties for future projects, if any.

DATED: December ___, 2015

WEBCOR CONSTRUCTION LP, d/b/a WEBCOR BUILDERS

By: _____
Name: Jes Pedersen
Title: President / CEO

LEND LEASE (US) CONSTRUCTION INC.

By: _____
Name:
Title SVP - GM

EXHIBIT C

CALIFORNIA PRELIMINARY 20-DAY NOTICE (PUBLIC WORKS OF IMPROVEMENT)

THIS IS NOT A LIEN. THIS NOTICE IS GIVEN PURSUANT TO CIVIL CODE SECTION 3097.

DATE 8/23/2017

YOU ARE HEREBY NOTIFIED THAT THE UNDERSIGNED HAS FURNISHED OR WILL FURNISH LABOR, SERVICES, EQUIPMENT OR MATERIAL OF THE FOLLOWING DESCRIPTION:

PERSON FURNISHING LABOR, SERVICES EQUIPMENT OR MATERIAL

(NAME)
Webcor Construction, LP dba Webcor Builders
(ADDRESS)
1751 Harbor Bay Parkway, Suite 200
(CITY) (STATE) (ZIP)
Alameda, CA 94502

DESCRIPTION OF LABOR, SERVICES, EQUIPMENT OR MATERIAL SUPPLIED, OR TO BE SUPPLIED

Structural Concrete

TO: OWNER OR REPUTED OWNER

Oceanwide Plaza LLC (AKA Tohigh Construction Investment, L
865 South Figueroa Street, Suite 3150
Los Angeles, CA 90017

THE NAME AND ADDRESS OF PERSON CONTRACTING FOR THE ABOVE (YOUR CUSTOMER) IS:

Lend Lease
800 W. 6th Street, 16th Floor
Los Angeles, CA 90017

TO: PRIME, REPUTED, OR ORIGINAL CONTRACTOR

Lend Lease
800 W. 6th Street, 16th Floor
Los Angeles, CA 90017

JOBSITE (STREET AND LEGAL DESCRIPTION (IF KNOWN)):

Oceanwide Plaza
1101 South Flower Street
Los Angeles, CA 90015

TO: CONSTRUCTION LENDER OR REPUTED CONSTRUCTION LENDER

NO LENDER

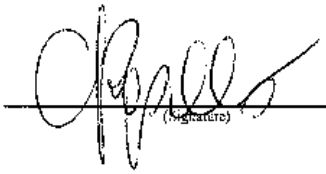
AN ESTIMATE OF THE TOTAL PRICE OF THE LABOR, SERVICES, EQUIPMENT OR MATERIALS FURNISHED OR TO BE FURNISHED IS: $ 122,000,000

TRUST FUNDS TO WHICH SUPPLEMENTAL FRINGE BENEFITS ARE PAYABLE

(NAME AND ADDRESS)

See attached.

(ONLY SUBCONTRACTORS ARE REQUIRED TO IDENTIFY THE TRUST FUND)



(Signature) 8/23/2017 (Date)

Candace Rosales (Name of Person Signing) Sr. Project (Title)

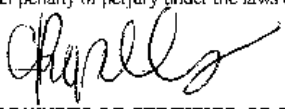
PROOF OF SERVICE AFFIDAVIT (CIVIL CODE § 3097.1)

I, Candace Rosales, declare that I served copies of the above PRELIMINARY NOTICE (check appropriate box).

(a) ☐ By personally delivering copies to _____ (name and title of person served) at _____ (Address) on _____ (date), at _____ (time).

(b) ☑ By First Class Certified or Registered Mail service, postage prepaid, addressed to each of the parties at the address shown above on August 23rd, 2017.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Signed at  , California, on August 23, 2017.

[ATTACH RECEIPTS OF CERTIFIED OR REGISTERED MAIL WHEN RETURNED]

SIGNATURE OF PERSON MAKING SERVICE

WEBCOR CONCRETE

Laborers
Local 300
4401 Santa Anita Ave Suite 150
El Monte CA 91731

Carpenters
Local 409
533 S Fremont Ave
Los Angeles, CA 90071

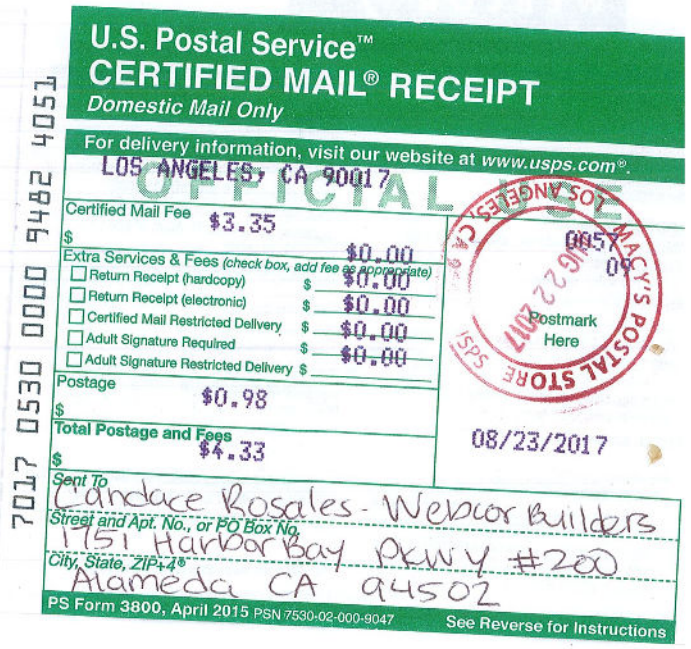
Cement Masons
Local 600
5417 N Peck Road
Arcadia, CA 91006-5847

Operators Engineers
Local 12
100 Corson St.
Pasadena, CA 91103

550 S. Hope Street, Suite 2100, Los Angeles, CA 90071
T 213.239.2818 • F 213.239.2838 • www.webcor.com • CL#899242 A, B, C-8

MACYS RETAIL STORE
750 W 7TH ST STE 201
LOS ANGELES
CA
90017-9997
0545170057
08/23/2017 (800)275-8777 11:39 AM

Product Description	Sale Qty	Final Price
Envelope 6"X9" (Unit Price:$0.49)	1	$0.49
First-Class Mail Letter (Domestic) (LOS ANGELES, CA 90017) (Weight:0 Lb 0.70 Oz) (Expected Delivery Day) (Friday 08/25/2017)	1	$0.49
Certified (@@USPS Certified Mail #) (70170530000094824044)	1	$3.35
First-Class Mail Large Envelope (Domestic) (LOS ANGELES, CA 90017) (Weight:0 Lb 1.00 Oz) (Expected Delivery Day) (Friday 08/25/2017)	1	$0.98
Certified (@@USPS Certified Mail #) (70170530000094824051)	1	$3.35
Total		$8.66
Credit Card Remitd (Card Name:MasterCard) (Account #:XXXXXXXXXXXX3840) (Approval #:098340) (Transaction #:559)		$8.66

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit USPS.com USPS Tracking or call 1-800-222-1811.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail