

RECORDING REQUESTED BY  
AND WHEN RECORDED  
MAIL TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
Attn: Zachary S. Finley, Esq.

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Space Above for Recorder's Use Only

APN: [\_\_\_\_\_]

**TRANSBAY JOINT POWERS AUTHORITY**  
(Trustor)

to

[\_\_\_\_\_  
(Trustee)

for the Benefit of

**GOLDMAN SACHS BANK USA, as Collateral Agent**  
(Beneficiary)

**DEED OF TRUST,  
ASSIGNMENT OF LEASES AND RENTS,  
AND SECURITY AGREEMENT**

Dated: As of \_\_\_\_\_, 2014

Location: As described on Exhibit A attached hereto

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND  
SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "*Deed of Trust*") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by **TRANSBAY JOINT POWERS AUTHORITY**, a joint powers authority created pursuant to an agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain) and California Government Code Section 6500 et seq., having its principal place of business at 201 Mission Street, Suite 2100, San Francisco, California 94105, as trustor ("*Trustor*"), to [\_\_\_\_\_] having an address of [\_\_\_\_\_], as trustee ("*Trustee*"), for the benefit of **GOLDMAN SACHS BANK USA**, as Collateral Agent for the Secured Parties (as defined in the Credit Agreement referred to below), having an address at [\_\_\_\_\_] (together with its successors and/or assigns in such capacity, "*Beneficiary*"), as beneficiary.

**WITNESSETH:**

A. Pursuant to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "*Credit Agreement*"), by and among Trustor, as Borrower, the financial institutions from time to time party thereto, as lenders ("*Lenders*"), and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent, Lenders have agreed to extend a senior secured term loan facility (the "*Term Facility*") to Trustor in an aggregate principal amount of One Hundred Seventy-One Million Dollars (\$171,000,000). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Credit Agreement.

B. Trustor desires to secure the payment of loans made by Lenders under the Term Facility ("*Loans*") and the payment and performance of all other Obligations by, among other things, executing and delivering this Deed of Trust in favor of Trustee for the benefit of Beneficiary.

NOW THEREFORE, in consideration of the making of the Loans by the Lenders and the covenants, agreements, representations and warranties set forth in this Deed of Trust:

**ARTICLE I.**

**GRANTS OF SECURITY**

**Section 1.01 Trust Property.** Trustor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey unto Trustee, in trust for the benefit of Beneficiary and its successors and assigns, for the benefit of the Lenders, WITH POWER OF SALE, all right, title, interest and estate of Trustor now owned, or hereafter acquired, in and to the following (it being understood that all property of tenants under any Lease ("*Tenants*") are excluded from the scope of this Deed of Trust) (collectively, the "*Property*");

(a) Land. The real property described in **Exhibit A** attached hereto and made a part hereof (the “**Land**”), [subject to the train box component easement described in **Exhibit B** attached hereto and made a part hereof (the “**Easement**”);<sup>1</sup>

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Deed of Trust;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, but excluding improvements related to the train box component of the Transbay Transit Center Project and subject to the Easement (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) but excluding the occupancy rights of the CM/GC (as defined in the Credit Agreement) under the CM/GC Agreement (as defined in the Credit Agreement) (collectively, the “**Leases**”), and all right, title and interest of Trustor, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code

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<sup>1</sup> Subject to on-going discussion about reservation for trainbox and related infrastructure.

(collectively, the “**Rents**”), and all proceeds from the sale or other disposition of the Leases and the right, if any, to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Loans;

(f) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(g) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(h) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes (as hereinafter defined) or Other Charges (as hereinafter defined) assessed against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(i) Rights. The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property;

(j) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the business use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Trustor thereunder;.

(k) Intellectual Property. All trade names, trademarks, service marks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;.

(l) Accounts. All reserves, escrows and deposit accounts maintained by Trustor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Credit Agreement or any other Credit Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(m) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;

(n) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(o) Other Rights. Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (n) above.

AND, it being understood and agreed that the Improvements are part and parcel of the Land (the Land, and the Improvements collectively referred to as the “*Real Property*”) appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and subject to the lien hereof.

**Section 1.02 Assignment of Rents**. Trustor hereby absolutely and unconditionally assigns to Beneficiary all of Trustor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.01(i) of this Deed of Trust, Beneficiary grants to Trustor a revocable license to collect, receive, use and enjoy the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Loans, for use in the payment of such sums.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall well and truly pay and perform the Obligations (including the payment of the Loans but excluding any obligations arising under Hedge Agreements) at the time and in the manner provided in this Deed of Trust, the Credit Agreement and the other Credit Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Credit Agreement and the other Credit Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Trustor’s obligation to indemnify and hold harmless the Indemnitees pursuant to the provisions hereof that expressly survive termination shall survive any such payment or release.

## ARTICLE II.

### LOANS AND OTHER OBLIGATIONS SECURED

**Section 2.01 Obligations**. This Deed of Trust and the grants, assignments and transfers made in Article I are given for the purpose of securing the Obligations (as defined below), including, but not limited to, the Loans and the following:

- (a) the performance of all Obligations of Trustor contained herein;
- (b) the performance of each Obligation of Trustor contained in each other Credit Document and each Hedge Agreement; and

(c) the performance of each Obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Credit Agreement, any other Credit Document or any Hedge Agreement.

**Section 2.02 Loan Repayment.** Provided that no Event of Default exists, the Lien of this Deed of Trust shall be terminated, released and reconveyed of record by Beneficiary (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Credit Agreement.

### ARTICLE III.

#### TRUSTOR COVENANTS

Trustor covenants and agrees that:

**Section 3.01 Payment of Loans.** The Obligations will be paid and performed at the time and in the manner provided in the Credit Agreement, the other Credit Documents and the Hedge Agreements, as applicable.

**Section 3.02 Incorporation by Reference.** All the covenants, conditions and agreements of Trustor contained in all of the Credit Documents executed by Trustor are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Trustor (i) agrees to insure, repair, maintain and restore damage to the Property in accordance with the Credit Agreement, pay mean real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Property (individually or collectively, “*Taxes*”) and all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof (individually or collectively, “*Other Charges*”), and comply with all requirements of law applicable to the Property including but not limited to, the requirements for affordable housing, as described in Section 5027.1 of the California Public Resources Code, incorporated into the Redevelopment Plan for the Transbay Redevelopment Project and that certain Implementation Agreement, dated as of January 20, 2005 between the Trustor and the Redevelopment Agency of the City and County of San Francisco, and finally and conclusively determined by the California Department of Finance to be enforceable obligations under Redevelopment Dissolution Law (the “Transbay Affordable Housing Obligation”) and the requirement for the parcelization and assembly of land into block and lots that are suitable for development, as described in the Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”) (collectively, the “Transbay Affordable Housing Obligation,” “Development Controls” and other legal requirements are referred to as (“*Requirements of Law*”)), and (ii) agrees that the Net Cash Proceeds of any Asset Sale of the Property or of any Casualty Event with respect to the Property shall be settled, held, applied and/or disbursed in accordance with the Credit Agreement.

**Section 3.03 Performance of Other Agreements.** Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by or pertaining to Trustor pursuant to the Credit Agreement, any other Credit Document and any Hedge Agreement, and each material term, covenant and provision of any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

## ARTICLE IV.

### OBLIGATIONS AND RELIANCES

**Section 4.01 Relationship of Trustor and Secured Parties.** The relationship between Trustor and Secured Parties is solely that of debtor and creditor, and no Secured Party has a fiduciary or other special relationship with Trustor, and no term or condition of any of the Credit Agreement, this Deed of Trust, the other Credit Documents or the Hedge Agreements shall be construed so as to deem the relationship between Trustor and any Secured Party to be other than that of debtor and creditor.

**Section 4.02 No Reliance on Beneficiary or Secured Parties.** The direct or indirect general partners, members, principals and beneficial owners and/or managers of Trustor or the foregoing, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Trustor, Beneficiary and the Secured Parties are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Beneficiary's or any of the Secured Parties' expertise, business acumen or advice in connection with the Property.

**Section 4.03 No Beneficiary Obligations.**

(a) Notwithstanding the provisions of Subsections 1.01(e) and (j) or Section 1.02, Beneficiary is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents; provided, however, that nothing in this Deed of Trust shall affect compliance with the Requirements of Law.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to the Secured Parties pursuant to this Deed of Trust, the Credit Agreement, the other Credit Documents or the Hedge Agreements, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Beneficiary nor any of the Secured Parties shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary or the Secured Parties.

**Section 4.04 Reliance.** Trustor recognizes and acknowledges that in accepting the Credit Agreement, this Deed of Trust and the other Credit Documents, Beneficiary and the Lenders are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Credit Agreement without any obligation to

investigate the Property and notwithstanding any investigation of the Property by Beneficiary or the Lenders; that such reliance existed on the part of Beneficiary and Lenders prior to the date hereof; that the warranties and representations are a material inducement to Lenders in making the Loans; and that the Lenders would not be willing to make the Loans and accept this Deed of Trust in the absence of the warranties and representations as set forth in Article III of the Credit Agreement.

## ARTICLE V.

### FURTHER ASSURANCES

**Section 5.01 Recording of Deed of Trust, Etc.** Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust and any of the other Credit Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Subject to any limitation expressly set forth in the Credit Agreement, Trustor will pay all applicable taxes, filing, registration or recording fees, and all applicable expenses incident to the preparation, execution, acknowledgment and/or recording of this Deed of Trust, the other Credit Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

**Section 5.02 Further Acts, Etc.** Trustor will, at the cost of Trustor, and without expense to Beneficiary or the Lenders, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Requirements of Law. Trustor, on demand, in form and substance reasonably acceptable to Beneficiary, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Beneficiary to execute in the name of Trustor or without the signature of Trustor to the extent Beneficiary may lawfully do so, one or more financing statements to evidence more effectively the security interest of Beneficiary in the Property. Trustor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of perfecting any lien or security interest granted hereunder for the purposes of exercising any and all rights and remedies available to Beneficiary or the Lenders at law and in equity.



**Section 5.03 Changes in Tax, Obligations, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Beneficiary's interest in the Property (but expressly excluding income, franchise or similar taxes imposed on Beneficiary), Trustor will pay the tax, with interest and penalties thereon, if any.

(b) Trustor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Obligations.

(c) If at any time the United States of America, any State thereof having jurisdiction over this Deed of Trust or any subdivision of any such State shall require revenue or other stamps to be affixed to this Deed of Trust, or any of the other Credit Documents or shall impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

**ARTICLE VI.**

**DUE ON SALE/ENCUMBRANCE**

**Section 6.01 Beneficiary Reliance.** Trustor acknowledges that Beneficiary and the Secured Parties have a valid interest in maintaining the value of the Property so as to ensure that, should Trustor default in the payment and/or performance of the Obligations, including the repayment of the Loans, Beneficiary, on behalf of the Secured Parties, can recover all or a portion of the Obligations by a sale of the Property.

**Section 6.02 No Transfer.** Trustor shall not permit or suffer any transfer, sale or further encumbrance to occur except in accordance with the terms of the Credit Agreement.

**ARTICLE VII.**

**RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.01 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Trustor agrees that Beneficiary may take such action, without notice or demand (except as expressly provided in the Credit Documents or required by applicable Requirements of Law), as it deems advisable at law or in equity to protect and enforce its rights against Trustor and in and to the Property, including, without limitation, to the fullest extent permitted by Requirements of Law, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, without, to the fullest extent permitted by Requirements of Law, impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) foreclose this Deed of Trust, insofar as it encumbers the Property, either by judicial action or through Trustee. Foreclosure through Trustee will be initiated by Beneficiary's filing of its notice of election and demand for sale with Trustee. Upon the filing of such notice of election and demand for sale, Trustee shall promptly comply with all notice and other requirements of the laws of the State of California then in force with respect to such sales. The proceeds of any sale under this section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Obligations in such order as Beneficiary may elect; any surplus remaining shall be paid over to Trustor or to such other person as may be lawfully entitled to such surplus. At the conclusion of any foreclosure sale, the officer conducting the sale shall execute and deliver to the purchaser at the sale such certificates of purchase or deeds or other instruments of conveyance as are permitted in accordance with California law. Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by California law, and any such inconsistency shall be resolved in favor of California law applicable at the time of foreclosure;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Deed of Trust for the balance of the Obligations not then due, unimpaired and without loss of priority;

(c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:

(d) (i) In connection with any sale or sales hereunder, Beneficiary shall be entitled, subject to the Requirements of Law, to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any Improvements (without causing structural damage thereto), as if the same were, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property;

(ii) Should Beneficiary elect to sell any portion of the Property which is Real Property, Beneficiary shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Credit Documents, and without the necessity of any demand on Trustor, Beneficiary at the time and place specified in the notice of sale, shall sell or cause to be sold such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Beneficiary may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iii) If the Property consists of several lots, parcels or items of property, Beneficiary shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary designates. Any Person, including Trustor or Beneficiary, may purchase at any sale hereunder. Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may designate, and no such sale shall terminate or otherwise affect the Lien of this Deed of Trust on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Beneficiary elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Credit Agreement or in the other Credit Documents;

(f) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Deed of Trust, the other Credit Documents or the Hedge Agreements;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice except as required by Requirements of Law and without regard for the adequacy of the security for the Loans and without regard for the solvency of Trustor, any guarantor or indemnitor with respect to the Loans or any Person otherwise liable for the payment of the Obligations or any part thereof;

(h) the license granted to Trustor under Section 1.02 hereof shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary during the continuance of an Event of Default, and thereupon Beneficiary or its agents, nominees or attorneys may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business there at; (ii) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (iii) require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor; (iv) require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and (v) apply the receipts from the Property to the payment and performance of the Obligations (including, without

limitation, the payment of the Loans), in such order, priority and proportions as Beneficiary shall deem appropriate after deducting therefrom all reasonable expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, premiums for all insurance required or otherwise maintained with respect to the Property (the "*Insurance Premiums*") and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees; and/or

(i) pursue such other remedies as Beneficiary or the Secured Parties may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Deed of Trust, to the fullest extent permitted by applicable law, shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.02 Application of Proceeds.** The purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Beneficiary pursuant to the Credit Agreement, this Deed of Trust or the other Credit Documents, shall, unless otherwise prohibited by applicable law, be applied by Beneficiary to the payment of the Obligations in the manner and order set forth in Section 8 of the Credit Agreement.

Upon any sale of the Property or any part thereof (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of Beneficiary or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Property so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Beneficiary or such officer or be answerable in any way for the misapplication thereof.

**Section 7.03 Right to Cure Defaults.** During the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without further notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. In connection with the foregoing, Beneficiary or its agents, nominees or attorneys are authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Obligations, and the reasonable cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the rate for default interest described in the Credit Agreement for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Obligations, shall be secured by this Deed of Trust and shall be due and payable to Beneficiary within three (3) days of demand.

**Section 7.04 Other Rights, Etc.**

(a) The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be

relieved of Trustor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Trustor or any guarantor or indemnitor with respect to the Obligations to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary or the Secured Parties extending the time of payment or otherwise modifying or supplementing the terms of the Credit Agreement, this Deed of Trust, the other Credit Documents or the Hedge Agreements.

(b) It is agreed that the risk of loss or damage to the Property is on Trustor, and neither Beneficiary nor any of the Secured Parties shall have any liability whatsoever for any decline in value of the Property, for failure to maintain any insurance policies covering the Property, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

(c) Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Loans) to any other security held by Beneficiary or the Secured Parties in such order and manner as Beneficiary may elect. Beneficiary may take action to recover the Loans, or any portion thereof, or to enforce the other Obligations or any covenant hereof, without, to the fullest extent permitted by applicable law, prejudicing the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.05 Right to Release Any Portion of the Property.** Subject to the Requirements of Law, Beneficiary may release any portion of the Property for such consideration as Beneficiary (on behalf of the Secured Parties) may require without, as to the remainder of the Property, to the fullest extent permitted by applicable law, in any way impairing or affecting the Lien or priority of this Deed of Trust, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Loans shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and Beneficiary (for the benefit of the Secured Parties) may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Deed of Trust shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.06 Violation of Laws.** In the event that Trustor receives notice that the Property is not in material compliance with all Requirements of Law, Beneficiary may impose reasonable additional requirements upon Trustor in connection herewith.

**Section 7.07 Right of Entry.** Upon reasonable notice (which may be given verbally) to Trustor, Beneficiary and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE VIII.

### INDEMNIFICATION

**Section 8.01 Mortgage and/or Intangible Tax.** Trustor shall, at its sole cost and expense, defend, indemnify, release and hold harmless Beneficiary and each other Indemnitee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and disbursements) imposed upon or incurred by or asserted against any Indemnitee by reason of any mortgage, recording, stamp, intangible or other similar taxes required to be paid by such Indemnitee under applicable Requirements of Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of this Deed of Trust (but excluding any income, franchise or other similar taxes).

**Section 8.02 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.** Upon written request by any Indemnitee under Section 8.01 above, Trustor shall defend such Indemnitee (if requested by any Indemnitee, in the name of the Indemnitee) by attorneys and other professionals approved by the Indemnitees, or, at the option of such Indemnitee, such Indemnitee shall have the right to employ separate counsel of its own choosing and Trustor shall pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of the reasonable out-of-pocket fees and disbursements of attorneys. Trustor shall also pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of the reasonable out-of-pocket fees and disbursements of engineers, environmental consultants, laboratories and other professionals engaged in connection therewith.

## ARTICLE IX.

### WAIVERS

**Section 9.01 Waiver of Counterclaim.** To the extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary or the Lenders arising out of or in any way connected with this Deed of Trust, the Credit Agreement, any of the other Credit Documents or the Obligations, except to the extent any such counterclaim arises from the gross negligence or willful misconduct of Beneficiary or the Lenders, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

**Section 9.02 Marshalling and Other Matters.** To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of

Trustor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust.

**Section 9.03 Waiver of Notice.** To the extent permitted by applicable law, Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary, except with respect to matters for which this Deed of Trust or the Credit Documents specifically and expressly provide for the giving of notice by Beneficiary to Trustor and Trustor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Deed of Trust or the other Credit Documents do not specifically and expressly provide for the giving of notice by Beneficiary to Trustor.

**Section 9.04 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Trustor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Loans).

**Section 9.05 Waiver of Jury Trial. TO THE MAXIMUM EXTENT NOT OTHERWISE PROHIBITED BY APPLICABLE LAW, EACH OF TRUSTOR AND BENEFICIARY, BY ITS ACCEPTANCE HEREOF, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE CREDIT AGREEMENT, THIS DEED OF TRUST OR THE OTHER CREDIT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF TRUSTOR AND BENEFICIARY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF TRUSTOR, BENEFICIARY AND THE LENDERS ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.**

**Section 9.06 Survival.** The indemnifications made pursuant to Article VIII herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Deed of Trust or any other Credit Document, (b) any assignment or other transfer of all or any portion of this Deed of Trust or any other Credit Document or Beneficiary's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Beneficiary's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Credit Agreement or any of the other Credit Documents, any transfer of all or any portion of the Property (whether by Trustor or by Beneficiary following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Deed of Trust, the Credit Agreement or any other Credit Document, (e) the resignation or removal of Beneficiary and/or (f) any act or omission that might otherwise be construed as a release or discharge of Trustor from the Obligations or any portion thereof.

## ARTICLE X.

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.1 of the Credit Agreement, provided that (i) the address for Trustor hereunder shall be the address used for Trustor as Borrower under the Credit Agreement, and (ii) the address for Beneficiary hereunder shall be the address used for Collateral Agent under the Credit Agreement.

## ARTICLE XI.

### APPLICABLE LAW

**Section 11.01 Governing Law; Jurisdiction; Service of Process.** WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS DEED OF TRUST; PROVIDED THAT WITH RESPECT TO THE MATTERS OF CAPACITY, POWER AND AUTHORITY OF TRUSTOR, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN. ALL PROVISIONS OF THE CREDIT AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL, TO THE EXTENT CONSISTENT WITH THE FOREGOING, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE CREDIT AGREEMENT.

**Section 11.02 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Trustor, and Beneficiary are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Beneficiary shall never exceed the Highest Lawful Rate, (b) in calculating whether any interest exceeds the Highest Lawful Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Trustor to Beneficiary, and (c) if through any contingency or event, Beneficiary receives or is deemed to receive interest in excess of the Highest Lawful Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Trustor to the Lenders, or if there is no such indebtedness, shall immediately be returned to Trustor.

**Section 11.03 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary



so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Deed of Trust or any application thereof shall be invalid or unenforceable, the remainder of this Deed of Trust and any other application of the term shall not be affected thereby.

## **ARTICLE XII.**

### **RULES OF INTERPRETATION**

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in the singular or plural form and the word "Trustor" shall mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Beneficiary in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

## **ARTICLE XIII.**

### **MISCELLANEOUS PROVISIONS**

**Section 13.01 No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Beneficiary, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 13.02 Successors and Assigns.** This Deed of Trust shall be binding upon, and shall inure to the benefit of, Trustor and Beneficiary and their respective successors and permitted assigns, as set forth in the Credit Agreement.

**Section 13.03 Inapplicable Provisions.** If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Deed of Trust, such provision shall be fully severable and this Deed of Trust shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Deed of Trust, and the remaining provisions of this Deed of Trust shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Deed of Trust, unless such continued effectiveness of this Deed of Trust, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**Section 13.04 Headings, Etc.** The headings and captions of the various Sections of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 13.05 Intentionally omitted.**

**Section 13.06 Entire Agreement.** The Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements constitute the entire understanding and agreement between Trustor, Beneficiary and the Secured Parties with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Trustor, Beneficiary and the Secured Parties with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements, there are not, and were not, and no Persons are or were authorized by Beneficiary or any Secured Party to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements.

**Section 13.07 Limitation on Beneficiary's Responsibility.** No provision of this Deed of Trust shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Beneficiary or the Secured Parties, nor shall it operate to make Beneficiary or the Secured Parties responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Beneficiary or the Secured Parties a "mortgagee in possession."

**Section 13.08 Recitals.** The recitals hereof are a part hereof, form a basis for this Deed of Trust and shall be considered prima facie evidence of the facts and documents referred to therein.

**Section 13.09 Trustee; Successor Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Trustor will, from time to time, reimburse Trustee for and save and hold him harmless from and against any and all loss, cost, liability, damage and reasonable expense whatsoever incurred by him in the performance of his duties. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent

required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall, without any formality or notice to Trustor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its or his place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

**Section 13.10 Credit Agreement.** All of the rights, privileges, protections and immunities of the Beneficiary set forth in the Credit Agreement shall apply to the Beneficiary for purpose of this Agreement.

## ARTICLE XIV.

### ADDITIONAL STATE SPECIFIC PROVISIONS

**Section 14.01 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article XIV and the terms and conditions of this Deed of Trust, the terms and conditions of this Article XIV shall control and be binding.

**Section 14.02 Additional Remedies Provision.** Upon the occurrence and continuance of an Event of Default, Trustor hereby authorizes and empowers Beneficiary, without any notice or demand, except to the extent required by applicable law, and without affecting the lien and charge of this Deed of Trust, to exercise any right or remedy which Beneficiary may have available to it, including, but not limited to, judicial foreclosure, exercise of rights of power of sale without judicial action as to any collateral security for the Obligations, whether real, personal or intangible property. Without limiting the foregoing, Trustor specifically agrees that any action maintained by Beneficiary for the appointment of any receiver, trustee or custodian to collect rents, issues or profits or to obtain possession of the Property shall not constitute an “action” within the meaning of §726 of the California Code of Civil Procedure.

**Section 14.03 Credit Document Approval.** Trustor has read and hereby approves the Credit Agreement, this Deed of Trust, the other Credit Documents, the Hedge Agreements and

all other documents relating thereto. Trustor acknowledges that it has been represented by counsel of its choice to review the Credit Agreement, this Deed of Trust, the other Credit Documents, the Hedge Agreements and all other documents relating thereto and said counsel has explained and Trustor understands the provisions thereof, or that Trustor has voluntarily declined to retain such counsel.

**Section 14.04 Additional Waivers.** Upon the occurrence and continuance of an Event of Default, Trustor hereby expressly waives diligence, demand, presentment, protest and notice of every kind and nature whatsoever (unless as otherwise required by law or under this Deed of Trust or the Credit Agreement) and waives any right to require Beneficiary to enforce any remedy against any guarantor, endorser or other person whatsoever prior to the exercise of its rights and remedies hereunder or otherwise.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, THIS DEED OF TRUST has been executed by Trustor as of the day and year first above written.

**TRANSBAY JOINT POWERS AUTHORITY,**  
a Joint Powers Agency

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of \_\_\_\_\_)

County of \_\_\_\_\_)

On \_\_\_\_\_, 2014, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

[To be attached.]