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ATE 32712

## TRUST DEED AND ASSIGNMENT OF LEASES AND RENTS

Vol. m88 Page 21816

DATE: December 20, 1988

## PARTIES:

Waggoner Plaza Limited Partnership, an Oregon Limited Partnership  
c/o Viking Financial Services, Inc., an Oregon Corporation  
1985 SW 6th Ave., Portland, OR 97201 ("Grantor")  
Grantor's Address

Stewart Title Guaranty Co.  
200 SW Market, Suite 104  
Portland, OR 97201 ("Trustee")  
Trustee's Address

Oregon Public Employees' Retirement Fund  
159 State Capitol Building  
Salem, OR 97310 ("Beneficiary")  
Beneficiary's Address

## PROPERTY ADDRESS:

Washburn Plaza Shopping Center  
NE Corner Washburn Way and Crosby Avenue

ARTICLE I  
GRANT

1.01 For good and valuable consideration, including the indebtedness herein recited and the trust assignment and security agreement herein created, the receipt of which is hereby acknowledged, Grantor hereby irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, for the benefit and security of Beneficiary, subject to the terms and conditions hereinafter set forth, the real property (the "Property"), located in the City of Klamath Falls, County of Klamath, State of Oregon, described as follows: (If lengthy legal description, see Exhibit "A" attached hereto and by this reference incorporated herein.)

Together with, all rents, issues, profits, royalties, income, proceeds and other benefits derived from the Property (collectively the "rents"), subject to the right, power and authority hereinafter given to Grantor to collect and apply such rents;

Together with, all leasehold estates, the right, title and interest of Grantor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Grantor hereunder, including, without limitation, all cash or security deposits, advance rentals, cleaning deposits, key deposits, pet deposits and deposits or payment of similar nature which are required under any rental agreement;

Together with, all right, title and interest of Grantor in and to all option to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

Together with, all interests, estate or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Property;

Together with, all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

Together with, all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips of land adjacent to or used in connection with the Property;

Together with, any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements or used in connection therewith (the "Improvements");

Together with, all right, title and interest of Grantor in and to all tangible personal property (the "Personal Property") owned by Grantor and now or at any time hereafter located on or at the Property or used in connection therewith, including but not limited to: all goods, inventory and supplies, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window, or structural cleaning rigs, maintenance and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters, and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies; and

Together with, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Trustee may hereafter be referred to herein as the "Property."

## FOR THE PURPOSE OF SECURING:

(a) Grantor's payment of indebtedness in the total principal amount of \$ 1,200,000.00 with interest thereon, evidenced by that certain promissory note of even date herewith (the "Note") with a maturity date of June 20 1992 (unless Grantor exercises various extensions pursuant to the terms of the Note, which extensions, if exercised, can extend the maturity date to December 20 1998), executed by Grantor, which has been delivered to and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof, or in substitution for/or in addition to such Note. The Note also contains provisions for the adjustment, indexing and renegotiation of the interest rate and payment terms, pursuant to paragraph 5 of the Additional Provisions for Promissory Note and paragraph 5 of the Additional Provisions for Trust Deed.

(b) Grantor's repayment of any advances or expenses of any kind incurred by Beneficiary pursuant to the provisions of or on account of the Note, the Trust Deed or any other instrument evidencing, securing or relating to the indebtedness evidenced by the Note, with interest thereon at twenty percent (20%) per annum, or the rate then applicable to the loan as provided in the Note, whichever is higher.

(c) Performance of all of the terms, covenants, provisions and agreement of the Trust Deed, the Note and any other instrument evidencing, securing or relating to the indebtedness evidenced by the Note (hereafter collectively referred to as the "Indebtedness").

#### ARTICLE II REPRESENTATIONS

2.01 Grantor represents and warrants that Grantor has good and marketable title to the Property and conveys the Property to the Trustee free and clear of all liens or encumbrances except as disclosed on Exhibit B attached hereto and incorporated herein. Grantor represents that it has full power to sell and convey the same and that Grantor will make any further assurances of title that the Beneficiary may require, and will defend the Property against all claims and demands whatsoever.

2.02 Grantor represents and warrants that this Trust Deed and the Note were executed in accordance with the requirements of the laws of the State of Oregon now in effect and, if Grantor is a corporation, in accordance with the requirements of Grantor's certificate of incorporation, bylaws, and any amendments thereto, and that this Trust Deed is and will be construed as a commercial Trust Deed (as defined in ORS 86.770), if paragraph 2.03 is marked "Business purposes (commercial)."

2.03 Grantor represents and warrants that the Property is not currently used for agricultural, timber or grazing purposes and is and shall be used for (indicate which):

[X]

Business purposes (commercial).

or

[ ]

Primarily for personal, family or household purposes.

#### ARTICLE III GRANTOR'S COVENANTS

3.01 Grantor covenants and agrees to pay the Note and the Indebtedness secured hereby in the manner and at the times provided for in the Note, this Trust Deed or any other agreement or instrument evidencing, securing or relating to the Note.

3.02 Grantor covenants and agrees to pay, or cause to be paid, when due and payable by Grantor:

(a) all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, and all other governmental and nongovernmental levies, fees and charges, of every kind and nature whatsoever, general and special, ordinary and extraordinary, unforeseen as well as foreseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Property, or any portion thereof, and all taxes, assessments, levies, fees and charges upon the rents, issues, income or profits of the Property, or which shall become payable with respect thereto or with respect to the occupancy, use or possession of the Property, whether such taxes, assessments, levies, fees or charges are levied directly or indirectly (hereinafter collectively called the "Impositions"); and

(b) all other payments or charges required to be paid to comply with the terms and provisions of this Trust Deed.

Unless Grantor is diligently pursuing the procedures provided for in paragraph 10.01 hereof, within ten (10) days after written demand therefore, Grantor shall deliver to Beneficiary the original, or a photostatic copy, of the official receipt evidencing payment of Impositions or other proof of payment satisfactory to Beneficiary. Failure of Grantor to deliver to Beneficiary the receipts or other satisfactory proof shall constitute a default hereunder. When requested by the Beneficiary, Grantor shall pay to the Beneficiary on each payment date under the Note, in addition to the monthly installments of principal and interest, an amount equal to one-twelfth (1/12th) of the real personal property taxes and assessments next due on account of the Property, as estimated by the Beneficiary, plus one-twelfth (1/12th) of the annual premiums for the fire and other casualty insurance policies required under the terms of this Trust Deed as estimated by the Beneficiary. The amount due under this paragraph shall be held by the Beneficiary and used to pay the property taxes and insurance premiums. Beneficiary may commingle the funds received under this paragraph with its general funds and may use and invest the funds received, and shall not be obligated to account to or pay Grantor any interest on the funds or any interest or profits generated from the use or investment of the funds. If, on October 15 of any year, or on or before thirty (30) days prior to any other property tax due date or the due date of any insurance premium, the funds on deposit with Beneficiary under this paragraph are insufficient to pay the property tax or insurance premium then due, Grantor shall, on demand, pay to Beneficiary the amount of the deficiency. In the event foreclosure of this Trust Deed is commenced while any funds are on deposit with Beneficiary under this paragraph, the funds shall be applied against the unpaid balance owing under the Note. Provided, however, the funds shall not be applied against any delinquent installments nor shall such payment cure any such defaults. Upon full payment of the Note, Beneficiary shall refund to Grantor the balance remaining on deposit with it.

Grantor agrees in no event to hold Beneficiary responsible for failure to have any insurance written or for any loss or damage growing out of a defect in any insurance policy, when Beneficiary collects insurance reserves and pays the insurance premiums with said reserves.

3.03 Grantor covenants and agrees promptly to comply, and cause all persons to comply with, all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities having or claiming jurisdiction of or with respect to the Property or any portion thereof or the use or occupation thereof.

3.04 Grantor shall keep and maintain or cause to be kept and maintained all buildings and improvements now or at any time hereafter erected on the Property and the sidewalks and curbs abutting them, in good order and condition and in a rentable and tenable state of repair, and will make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. All repairs and maintenance required of Grantor shall be (in the reasonable opinion of Beneficiary) of first class quality. Grantor shall abstain from and shall not permit the commission of waste in or about the Property; shall not remove, demolish, or alter any building or other improvement erected at any time on the Property without the prior written consent of the Beneficiary; and shall not permit the Property to become vacant, deserted or unguarded.

3.05 Grantor shall not make or cause to be made any improvements to the Property unless written approval is first obtained from Beneficiary.



3.06 Grantor covenants and agrees that this Trust Deed is and will be maintained as a valid first lien on the Property, subject only to the liens and encumbrances set forth in Article II of this Trust Deed, and that Grantor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Property, or any portion thereof, or against the rents, issues and profits therefrom, any lien (including any liens arising with respect to the payment of impositions), any security interest, encumbrance or charge whether prior to or subordinate to the lien of this Trust Deed unless written approval is first obtained from Beneficiary. Grantor will keep and maintain the Property free from all liens of persons supplying labor and materials for the construction, modification, repair or maintenance of any building or site improvement whether on the Property or not. If any such liens shall be filed against the Property, Grantor agrees to discharge the same of record within ten (10) days after the liens are filed or, if not filed, within ten (10) days after Grantor has notice thereof, by payment, by deposit or bonding under ORS §§87.076-87.088 or similar statutes, by order of a court of competent jurisdiction, or otherwise. In no event shall Grantor do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing or omission of which would impair the security of this Trust Deed.

3.07 Grantor covenants and agrees, so long as any amount remains owing under the Note, to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Grantor or applicable to the Property or any part thereof.

3.08 Grantor covenants and agrees that all awards heretofore or hereafter made by any public or quasi-public authority to grantor by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Property, are hereby assigned to the Beneficiary. Beneficiary, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award and awards from the authorities making the same and to give proper receipts and acquittances therefore, and may, at the Beneficiary's election, use such proceeds in any one or more of the following ways: (i) apply the same or any part thereof upon the Note, whether such Note then be matured or unmatured, (ii) use the same or part thereof to fulfill any of the covenants contained herein as the Beneficiary may determine, (iii) use the same or any part thereof to replace or restore the Property to a condition satisfactory to the Beneficiary or (iv) release the same to the Grantor.

3.09 Grantor covenants and agrees that it will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Property, noncompliance with which might affect the security of this Trust Deed or impose any duty or obligation upon Grantor, and Grantor shall do or cause to be done, all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interest and rights to, in favor of, or constituting any portion of the Property.

3.10 Grantor covenants and agrees that neither the value of the Property nor the lien of this Trust Deed will be diminished or impaired in any way by any act or omission of the Grantor, and the Grantor agrees it will not do or permit to be done to, in, upon or about said Property, or any part thereof, anything that may in any wise impair the value thereof, or weaken, diminish, or impair the security of this Trust Deed.

3.11 Subject to the rights granted Grantor in Section 10.01 of this Trust Deed, Grantor covenants and agrees to promptly pay and discharge any and all license fees or similar charges, with penalties and interest thereon, which may be imposed by the municipality or county in which the Property is situated or any other governmental body having jurisdiction thereof and will promptly cure any violation of law and comply with any order of said municipality, county or other governmental body in respect of the repair, replacement or condition of the Property and any governmental regulations concerning environmental control and improvements, and that in default thereof, Beneficiary may, but shall not be required to, pay any and all such license fees or similar charges or comply with such regulations with penalties and interest thereon. All amounts so paid shall thereupon be liens upon the Property and secured by this Trust Deed, and Grantor will repay the same upon demand, with interest thereon at the rate then in effect under the Notes, from the date of such payment by Beneficiary.

3.12 Grantor covenants and agrees that if any action or proceeding is commenced in which Beneficiary in good faith deems it necessary to defend or uphold the validity, enforceability or priority of the lien and interest of this Trust Deed or to preserve the value of the security for this Trust Deed, all sums paid by Beneficiary for the expense of any such litigation to prosecute or defend the lien created by this Trust Deed (including reasonable attorneys' fees at trial and upon any appeal) shall be paid by Grantor, together with interest thereon at the rate then in effect under the Note and any such sums and the interest thereon shall be a lien on the Property prior to any right or title to, interest in or claim upon the Property attaching or accruing subsequent to the lien of this Trust Deed, and shall be secured by this Trust Deed.

3.13 Grantor covenants and agrees that it will deliver to Beneficiary:

- (a) Such information from time to time regarding the business affairs and financial condition of Grantor as Beneficiary may reasonably request;

- (b) Within ninety (90) days after the end of each fiscal year, a copy of Grantor's and each Guarantor's annual, unqualified, consolidated balance sheet and statements of income, retained earnings, capital surplus and capital stock, as of the end of each fiscal year, prepared by an independent certified public accountant acceptable to Beneficiary in accordance with generally accepted accounting principles consistently applied.

- (c) Within ninety (90) days after the end of each fiscal year of Grantor, Grantor shall deliver to Beneficiary complete financial statements setting forth all details of the operation of the Property, including an itemized list of rentals and expenses on the Property, a profit and loss statement, balance sheet and reconciliation of surplus, which statements shall be certified by Grantor and, if Beneficiary shall require, by an independent certified public accountant acceptable to Beneficiary. Grantor shall furnish, together with the foregoing financial statements and at any other time upon Beneficiary's request, a rent schedule for the Property, certified by Grantor, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, and the rent paid.

3.14 Grantor covenants and agrees that, to the extent that Grantor may lawfully do so, Grantor shall not assert, and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets.

3.15 Grantor, from time to time, within ten (10) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary such chattel mortgages, security agreements and other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Grantor or in which Grantor has any interest which, in the sole opinion of Beneficiary, is essential to the operation of the said property covered by this Trust Deed. Grantor shall further, from time to time, within ten (10) days after request of Beneficiary execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of this Trust Deed and the priority such chattel mortgage or other security instrument

as a first lien. The Grantor irrevocably appoints the Beneficiary its attorney-in-fact to execute and deliver such financing statements and security documents during the term of this Trust Deed. Grantor further agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and refiling of any such instrument or document including the charges for examining title and the attorney's fee for rendering an opinion as to the priority of this Trust Deed and of such chattel mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Beneficiary nor the failure of Beneficiary to make such request shall be construed as a release of such property, or any part thereof from the conveyance of title by this Trust Deed, it being understood and agreed that this covenant and any such chattel mortgage, security agreement or other similar security instrument, delivered to Beneficiary, is cumulative and given as additional security.

When and if the Beneficiary and Grantor shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the premises or any way connected with the use and enjoyment of the premises, this Trust Deed shall be deemed a security agreement as defined in the Uniform Commercial Code of the State where the premises are situate and if a default or an event of default shall occur under the Trust Deed or the Note, the remedies of the Beneficiary shall be as described herein or by general law, or as to such part of the premises which is also reflected in said financing statement, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, the choice of remedies to be at Beneficiary's sole selection. Grantor and Beneficiary agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the declaration and hereby stated intention of the parties hereto that everything used in connection with the production of income from the premises and/or adopted for use therein and/or which is described or reflected in this Trust Deed is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be regarded as part of the real estate mortgaged hereunder irrespective of whether such item is physically attached to the improvements, or serial numbers are used in any recital of this Trust Deed for the better identification of such items or any such item is referred to or reflected in a financing statement. Similarly, the mention in any such financing statement of the right in or to the proceeds of any fire or hazard insurance policy or any award in eminent domain proceeding for a taking of or loss of value, or the mention of Grantor's interest as lessor in any present or future lease to rights to income growing out of the use and/or occupancy of the premises, whether pursuant to lease or otherwise, shall never be construed as any wise altering any of the rights of the Beneficiary as determined by this instrument or impugning the priority of the Beneficiary's lien granted hereby or by any other recorded document, but such mention in a financing statement is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold with respect to the above that notice of the Beneficiary's priority of interest against a particular class of persons, including but not limited to the federal government or any subdivisions thereof, must be filed in the Uniform Commercial Code records.

Grantor represents and agrees that (i) it is and will be the true and lawful owner of the collateral mentioned in any financing statement, subject to no liens, charges, security interest and encumbrances other than this lien hereof; (ii) such collateral is to be used by the Grantor solely for business purposes (if this is a commercial Trust Deed), being installed upon the premises for Grantor's own use or as the equipment and furnishings furnished by the Grantor, as landlord, to tenants of the premises; (iii) such collateral will be kept at the real estate comprised on the premises and will not be removed therefrom without the consent of the Beneficiary and may be affixed to such real estate but will not be affixed to any other real estate; (iv) the only persons having any interest in the premises are the Beneficiary and Grantor; (v) no financing statement covering any such collateral and any proceeds thereof is on file in any public office except pursuant hereto and the Grantor will at its own cost and expense upon demand furnish to Beneficiary such further information and will execute and deliver to the Beneficiary and will do all acts and things as the Beneficiary may from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in such collateral as security for the indebtedness secured hereby and the Grantor will pay the cost of filing or recording such financing statements or other documents and this instrument; and (vi) the remedies of the Beneficiary hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code shall not be construed as a waiver of any of the other rights of the Beneficiary including having such collateral deemed part of the realty upon any foreclosure thereof.

#### ARTICLE IV TRANSFER OR MORTGAGE OF PROPERTY

4.01 Grantor understands that the loan secured hereby is personal to Grantor, and that Grantor's personal responsibility and occupancy and/or control of the Property is a material inducement to Beneficiary to make the loan secured hereby. Grantor will not, without the prior written consent of Beneficiary, sell, assign, transfer, mortgage, grant a further trust deed, or pledge or otherwise dispose of or further encumber, whether by operation of law or otherwise, any or all of its interest in the Property. Any sale, assignment, transfer, mortgage, trust deed, pledge, or other disposition or encumbrance made in violation of this provision, whether voluntary or involuntary, shall be null and void and of no force and effect, and the making thereof shall constitute a default under this Trust Deed, the Note, and the other agreements and instruments securing the Note. If any Grantor is a corporation or a partnership, the sale, assignment, transfer, mortgage, trust deed, pledge or other disposition or encumbrance of more than twenty percent (20%) of the shares of the stock of the corporation or a partnership interest, shall constitute a sale, assignment, transfer, mortgage, trust deed, pledge, or other disposition or encumbrance of the Property under this provision, determined on the basis of all such events in the aggregate during the term of the Note. On request, Grantor will provide Beneficiary with a certified statement (or copy of any public filing) from time to time listing the persons holding partnership interests in Grantor and the respective percentage interest held by each. Grantor will promptly reimburse Beneficiary for its reasonable costs and reasonable attorney fees incurred in reviewing any requests for consent to transfer and in preparing documents required in connection therewith.

4.02 Beneficiary may consent to a sale or transfer of the Property if: (a) Grantor causes to be submitted to Beneficiary information required by Beneficiary to evaluate the transferee as if a new loan were being made to the transferee; (b) Beneficiary reasonably determines that Beneficiary's security will not be impaired and that the risk of breach of any covenant or agreement in the Note, Trust Deed or any other instrument evidencing, securing or relating to the indebtedness evidenced by the Note is acceptable; (c) interest will be payable on the indebtedness at a rate acceptable to Beneficiary, provided that Beneficiary may not increase the interest rate more than two percent (2%) per annum; (d) changes in the terms of the Note, this Trust Deed and any other instrument evidencing, securing or relating to the indebtedness evidenced by the Note required by Beneficiary are made, including, for example, periodic adjustment in the interest rate, a different final payment date and addition of unpaid interest to principal; and (e) transferee signs an assumption agreement that is acceptable to Beneficiary and that obligates the transferee to keep all of the promises and agreements made in the Note, this Trust Deed and any other instrument evidencing, securing or related to the indebtedness evidenced by the Note. To the extent permitted by applicable law, Beneficiary also may charge an assumption fee equal to one percent (1%) of the unpaid principal balance of the note at the time of the transfer.

4.03 Grantor acknowledges and agrees that Beneficiary's consent to any transfer under this Article IV shall not relieve Grantor of any obligation, responsibility or liability to Beneficiary under the Note or this Trust Deed unless Beneficiary specifically agrees in writing. Consent by Beneficiary to a transfer shall not be deemed a waiver of the



**ARTICLE V**  
**PERFORMANCE OF GRANTOR'S OBLIGATIONS; PROTECTION OF PROPERTY**

5.01 If Grantor shall fail to pay any Impositions or to make any other payment required to be paid by Grantor under this Trust Deed at the time and in the manner provided in this Trust Deed, or if Grantor shall be in default in the performance or observance of any other term, covenant, or condition of any prior encumbrance or any other obligation required to be performed or observed by Grantor under this Trust Deed, the Note, any other agreement or instrument evidencing, securing or relating to the Indebtedness or any instrument of record, then, after the expiration of any applicable grace period as set forth in any such agreement or instrument, and without limiting the generality of any other provision of this Trust Deed and without waiving or releasing Grantor from any of its obligations hereunder, Beneficiary shall have the right, but shall be under no obligation, to pay any Impositions or other payments, or any sums due under this Trust Deed or any prior encumbrance or any other agreement or instrument evidencing, securing or relating to the Indebtedness, and may perform any other act or take such action as may be appropriate to cause such event, Beneficiary and any person designated by Beneficiary shall have, and is hereby granted, the right to enter upon the Property at any time and from time to time for the purposes of performing any such act or taking any such action, and all moneys expended by Beneficiary in connection with making such payment or performing such act (including, but not limited to, attorneys' fees and expenses), together with interest thereon at the rate then in effect under the Note to Grantor demanding such payment, and shall be secured by this Trust Deed, and Beneficiary shall have the same rights and remedies in the event of nonpayment of any such sums by Grantor as in the case of a default by Grantor in the payment of the Note. Nothing in this paragraph or in any other part of this Trust Deed shall be construed to require Beneficiary to make any payment or perform any obligation of Grantor. Any action taken by Beneficiary hereunder or in relation to the Property is for the sole benefit of Beneficiary and no other person shall rely upon any action, inaction, inspection or other act of Beneficiary in dealing with the Property or Grantor.

5.02 **Hazardous Materials.** Grantor hereby represents and warrants to Beneficiary that, to the best of Grantor's knowledge there are no materials presently located on or near the Property which, under any governmental authority or requirement (collectively the "Environmental Requirements"), require special handling in collection, storage, treatment, or disposal and that Grantor will not place or permit to be placed any such materials on or near the Property. If at any time materials are located on or near the Property which under any Environmental Requirement require special handling in connection, storage, treatment or disposal, Grantor, within thirty (30) days after written notice, shall take at its sole expense such actions as may be necessary to comply with all Environmental Requirements. Grantor hereby agrees to indemnify and hold harmless Beneficiary from all loss, liability, damage, cost and expense, including reasonable attorneys' fees, for failure of the Property to comply in all respects with the Environmental Requirements. The provisions hereof shall survive payoff, release, or foreclosure of this Trust Deed. Grantor promptly upon the written request of Beneficiary from time to time, shall provide Beneficiary with such environmental site assessment, audit report, or update as Beneficiary may reasonably require to assure the protection of the Property, in scope, form, and content satisfactory to Beneficiary. In addition, Grantor agrees to defend, indemnify and hold Beneficiary harmless before or after foreclosure, which Beneficiary may sustain as a result of or on account of any lien imposed upon the Property pursuant to the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), any other applicable federal statutes, any applicable state statutes and local ordinances, or any amendments thereto dealing with cleanup or removal of toxic or hazardous wastes or substances. As used herein, "toxic or hazardous wastes or substances" shall be interpreted broadly to include, but not to be limited to, wastes, substances, and materials designated as toxic, hazardous, or dangerous under the Federal Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state, or local law, rule, or regulation pertaining to environmental regulation, contamination, or cleanup.

**ARTICLE VI**  
**ASSIGNMENT OF LEASES AND RENTS**

6.01 Grantor hereby absolutely and irrevocably assigns to Beneficiary all of Grantor's interest in all rents, issues and profits of the Property, now due and to hereafter become due and payable under the lease and contracts pertaining to the Property. Grantor grants to Beneficiary the right to enter the Property and to let the Property, or any part thereof, and to apply said rents, issues, profits and proceeds after payment of all charges and expenses, on account of the Note and other sums secured hereby. This assignment and grant shall continue in effect until the Note and other sums secured by this Trust Deed are paid in full. Beneficiary hereby agrees not to exercise the right to enter the Property for the purpose of collecting said rents, issues or profits and Grantor shall be entitled to collect and receive said rents, issues, profits and proceeds until the occurrence of a default by Grantor under the terms and provisions hereof; provided that any rents, issues and profits collected and received by Grantor after the occurrence of a default hereunder which is not cured within the applicable grace period provided hereby, if any, shall be deemed collected and received by Grantor in trust for Beneficiary and Grantor shall account to Beneficiary for the full amount of such receipts. Grantor agrees to apply said rents, issues and profits, whenever received, to payment of the Note, all Impositions on or against the Property and other sums secured by this Trust Deed. The right of Grantor to collect and receive the rents, issues and profits in trust for Beneficiary during the continuance of any default by Grantor under the terms and provisions of this Trust Deed may be revoked by Beneficiary giving written notice of such revocation to Grantor.

6.02 Grantor will, from time to time after notice and demand, execute and deliver to Beneficiary, in form satisfactory to Beneficiary, further agreements evidencing its willingness to comply and its compliance with the provisions of this Article VI. Grantor shall pay Beneficiary the expenses incurred by Beneficiary in connection with the recording of any such agreement.

6.03 The assignment contained in this Article VI shall not in any way impair or diminish the obligations of the Grantor, nor shall this assignment impose any obligation on Beneficiary to perform any provision of any lease or contract pertaining to the Property or any responsibility for the nonperformance thereof by Grantor or any other person. The assignment under this Article VI is given as an absolute assignment of the rights described herein and such assignment shall not be deemed secondary to this Trust Deed. Beneficiary shall have the right to exercise any rights under this Article VI before, together with, or after exercising any other rights under this Trust Deed.

**ARTICLE VII**  
**DEFAULT**

7.01 The entire unpaid balance owing under the Note shall become due, at the option of Beneficiary, if any one or more of the following events of default shall occur:

(a) Failure of Grantor to observe or perform, on or before the date due, any of the covenants or conditions to be performed by Grantor under the terms hereof.