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RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Mike Shima  
AT&T Commercial Finance Corporation  
44 Whippany Road  
Morristown, New Jersey 07960

*K-47442*  
**DEED OF TRUST  
AND ASSIGNMENT OF LEASES AND RENTS**

This Deed of Trust and Assignment of Leases and Rents (hereinafter called "Deed of Trust") is made this 8<sup>th</sup> day of December, 1994, between A.A.A. Properties, Inc., an Oregon corporation, whose address is 3815 South Sixth Street, Klamath Falls, Oregon 97603 (hereinafter called "Grantor"); Klamath County Title Company, whose address is 422 Main Street, P.O. Box 151, Klamath Falls, Oregon 97601 (who, with its successors, is hereinafter called "Trustee"); and AT&T Commercial Finance Corporation whose address is 44 Whippany Road, Morristown, New Jersey 07960 (hereinafter called "Beneficiary"),

**WITNESSETH:**

That Grantor does hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Klamath, State of Oregon, described in Exhibit "A" attached hereto and by this reference incorporated herein, 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 such buildings and improvements, which are herein collectively called the "Property";

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 and gores of land adjacent to or used in connection with the Property;

**Together With** all right, title, and interest of Grantor in the funds deposited pursuant to Section 1.06;

**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;

**Together With** any and all existing and future leases (including subleases thereof), whether written or oral, rental agreements and all future agreements for use and occupancy, and any and all extensions, renewals and replacements thereof, upon all or relating to any part of the Property (hereinafter collectively referred to as the "Leases");

**Together With** any and all guaranties of tenant's performance under any and all of the Leases; and

**Together With** the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now due or which may become due or to which Grantor may now or shall hereafter (including any income of any nature coming due during any redemption period) become entitled to or may make demand or claim for, arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to, minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents and liquidated damages following default in any Lease, all accounts receivable and general intangibles related to the operation of the Property and any business operated thereon by Grantor and all proceeds thereof, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Grantor may have against any tenant under the Leases or any subtenants or occupants of the Property (all such monies, rights and claims described in this paragraph being hereinafter called "Cash Collateral"), Excepting Therefrom, any sums which by the express provisions of any of the

Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Leases.

**Subject, However,** to a license hereby granted by Beneficiary to Grantor, but limited as hereinafter provided, to collect and receive all of the Cash Collateral.

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

### FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the total principal amount of \$ 625,874.78 with interest thereon, evidenced by that certain Promissory Note dated November 30, 1994 (the "Note") executed by Andersch Home Furnishings, Inc. ("Borrower"), which has been delivered to, and is payable to, the order of Beneficiary, and any and all modifications, extensions, and renewals thereof. The interest rate payment terms or the balance due on the Note and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust.
2. Payment of any and all other liabilities and obligations of every kind and nature of Borrower to Beneficiary however created, arising, or evidenced, whether direct or indirect, absolute or contingent, now existing or hereafter arising.
3. Payment of all sums which may become due from Grantor or advances by Beneficiary or its successor, with interest thereon at the rate set forth herein, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by the Grantor of all attorneys' fees and costs incurred by the Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantor of all attorneys' fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantor of all sums advanced by Beneficiary to or on behalf of the Trustee for the purpose of clearing encumbrances or defects from the title to the Property described in this Deed of Trust where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Deed of Trust; payment by Grantor of all attorneys' fees and costs incurred by Trustee or Beneficiary in any bankruptcy

case, proceeding, or matter affecting Grantor or this Deed of Trust; and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate set forth herein.

4. Payment of all other liabilities and obligations of every kind and nature of Grantor to Beneficiary however created, arising, or evidenced, whether direct or indirect, absolute or contingent, now existing or hereafter arising.

## ARTICLE I COVENANTS AND AGREEMENTS OF GRANTOR

Grantor hereby covenants and agrees:

**1.01 Maintenance of the Property.** The Property shall be maintained in good condition at all times. Grantor shall promptly make all necessary repairs, replacements, and renewals so that the value of the Property shall be maintained. Grantor shall not commit or permit any waste on the Property. Grantor shall comply with all laws, ordinances, regulations, and private restrictions affecting the Property. To the extent that the Property constitutes commercial property, Grantor shall operate the Property in such manner as to prevent deterioration of the land and improvements including fences, except for reasonable wear and tear from proper use. Grantor shall not demolish or remove any improvements from the Property without the written consent of Beneficiary.

**1.02 Required Insurance.** Grantor shall at all times provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, the following policies of insurance:

(a) Insurance against loss or damage to the building and improvements situated on the Property (the "Improvements") by fire and any of the risks covered by insurance of the type now known as "broad form of extended coverage," in an amount not less than the greater of (i) one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (ii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies; and with not more than One Thousand and No/100 Dollars (\$1,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement";

(b) Such other insurance and in such amounts as may, from time to time, be required by Beneficiary against the same or other hazards, including, without limitation, business interruption insurance or insurance covering loss of rents and flood insurance where applicable; and

(c) All policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim, or deductions against Grantor.

### **1.03 Delivery of Policies; Payment of Premiums; Proceeds.**

(a) All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with an original policy of all policies of required insurance. If Beneficiary consents to Grantor providing any of the required insurance through blanket policies carried by Grantor and covering more than one (1) location, then Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

(b) At least thirty (30) days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage without at least thirty (30) days' prior written notice to Beneficiary. In the event Grantor fails to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance required by this section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantor will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantor, the amount

of all such premiums shall be secured by this Deed of Trust.

(c) In the event of loss, Grantor shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantor. Proceeds shall be paid directly to Beneficiary who may compromise with any insurance company and make a final settlement which shall be binding upon Grantor. Beneficiary may, at its election, apply the proceeds to the reduction of the indebtedness secured hereby or to the restoration or repair of the Property.

**1.04 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantor in and to all policies of insurance required by Section 1.02 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate.

**1.05 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary harmless from all liability, loss, cost, or damage, by reason of said litigation, including reasonable attorney's fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment.

(b) Grantor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) Grantor authorizes Beneficiary, without notification or demand, and without affecting any liability of Grantor or Beneficiary's interest in the Trust Estate, from time to time to (i) renew, extend, accelerate, or otherwise change the time for payment of, or the other terms relating to, any obligation secured hereby or otherwise amend, modify, or exchange the terms of any document relating to any obligation secured hereby including the Note, (ii) accept partial

payments on any obligation secured hereby, (iii) take and hold security or collateral for any obligation secured hereby and to exchange, enforce, waive, and release any such security or collateral, (iv) apply such security or collateral and direct the order and manner of sale thereof as it may determine in its sole discretion, and (v) settle, release, compromise, collect, or otherwise liquidate any obligation secured hereby and any security or collateral therefor in any manner without affecting or impairing any obligation secured hereby.

(d) All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

**1.06 Taxes and Liens.** Grantor shall pay before they become delinquent all taxes and assessments levied against or on account of the Trust Estate and shall pay as due all claims for work done on or for services rendered or material furnished to the Property. Special assessments shall be paid currently, without deferral, unless the lien for deferred assessments is subordinate to the interest of Beneficiary under this Deed of Trust, or Beneficiary gives its prior written consent to the



deferral. Grantor shall maintain the Trust Estate free of any liens having priority over or equal to the interest of Beneficiary under this Deed of Trust except for "Permitted Encumbrances" as defined in Section 1.09, the lien of taxes and assessments not delinquent, and except as hereinafter otherwise provided. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Trust Estate is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorney fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. The assessor or tax collector of the county in which the Property is located is authorized to deliver to Beneficiary a written statement of the property taxes assessed or owing at any time.

**1.07 Expenditures by Beneficiary.** If Grantor shall fail to comply with any provision of this Deed of Trust, Beneficiary may, at its option, on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the indebtedness secured hereby. Amounts so added shall be payable on demand with interest at the rate specified in the Note, or if more than one interest rate or no rate is applicable, then at the rate of 12 percent per annum (the "Note Rate") from the date of expenditure. The rights provided for in this section shall be in addition to any other rights or any remedies to which Beneficiary may be entitled on account of the default, and Beneficiary shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

**1.08 Utilities.** Grantor shall pay or cause to be paid when due all utility charges which are incurred by Grantor for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.

**1.09 Warranty; Defense of Title.** Grantor warrants that Grantor holds merchantable title to the Property in fee simple, free of all encumbrances other than the encumbrances described on Exhibit B attached hereto (hereinafter referred to as "Permitted Encumbrances"). Grantor warrants and will forever defend the title against the claims, other than Permitted Encumbrances, of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary



under this Deed of Trust, Grantor shall defend the action at Grantor's expense. If any Permitted Encumbrance is a lien, Grantor shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which with the lapse of time, the giving of notice, or any other action of a creditor, would be a default or enable any creditor to declare a default or foreclose any Permitted Encumbrance which is a lien.

**1.10 Condemnation.** If all or any part of the Trust Estate is condemned, Beneficiary may at its election require that all or any portion of the net proceeds of the award be applied on the indebtedness secured hereby. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorney fees necessarily paid or incurred by Grantor and Beneficiary in connection with the condemnation. If any proceeding in condemnation is filed, Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor hereby assigns to Beneficiary the net proceeds of any condemnation award.

**1.11 Imposition of Tax.** The following shall constitute taxes to which this paragraph applies:

(a) A specific tax upon deeds of trust or upon all or any part of the indebtedness secured by a deed of trust.

(b) A specific tax on the owner of property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust.

(c) A tax on premises covered by a deed of trust chargeable against Beneficiary under the deed of trust or the holder of the note secured.

(d) A specific tax on all or any portion of the indebtedness secured hereby or on payments of principal and interest made by a Grantor under a deed of trust.

If any federal, state, or local tax to which this paragraph applies is enacted subsequent to the date of this Deed of Trust, this shall have the same effect as a default and Beneficiary may exercise any or all of the remedies available to it in the event of a default unless the following conditions are met:

(a) Grantor may lawfully pay the tax or charge imposed; and

(b) Grantor pays the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted.

**1.12 No Waiver.** By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

**1.13 Accounting.** Grantor shall keep and maintain or shall cause to be kept and maintained in accordance with sound accounting practice accurate and proper books of record and account relating to the Property. Grantor shall permit Beneficiary to examine the books of account and other records of Grantor, to discuss the affairs, finances and accounts of Grantor and to be informed as to the same by Grantor, all at such reasonable times and intervals as Beneficiary may desire.

## ARTICLE II ASSIGNMENT OF LEASES AND RENTS

**2.01 Assignment.** All Leases and Cash Collateral, royalties, income and profits of the Property that arise from its use or occupancy are hereby absolutely and presently assigned to Beneficiary. However, until an event of default occurs, Grantor shall have a license to collect and receive the Cash Collateral.

**2.02 Actions by Beneficiary.** Upon any event of default, Beneficiary may terminate Grantor's license in its discretion at any time without prior notice to Grantor and may thereafter collect the Cash Collateral itself or by an agent or receiver. No action taken by Beneficiary to collect the Cash Collateral or any part thereof shall make Beneficiary a "mortgagee-in-possession" of the Property, unless Beneficiary personally or by agent enters into actual possession of the Property. Possession by a court-appointed receiver shall not be considered possession by Beneficiary. Grantor hereby agrees that the receiver may apply the Cash Collateral first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the payment of the indebtedness and obligations secured by this Deed of Trust.

**2.03 Covenants of Grantor.** Grantor shall not execute any leases or occupancy agreements affecting any of the Property except in a form approved by Beneficiary. Without the prior written consent of Beneficiary, Grantor shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of the Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair Beneficiary's interest in the rents, royalties, income and profits of the Property. Grantor shall at all times perform all covenants of the lessor under any such leases or occupancy

agreements. Upon Beneficiary's request, Grantor shall execute and deliver to Beneficiary for recordation an assignment of leases and a financing statement in form acceptable to Beneficiary evidencing the assignment provided for herein.

### ARTICLE III REMEDIES UPON DEFAULT

**3.01 Events of Default.** Any of the following events shall be deemed an event of default hereunder:

- (a) Default shall be made in the payment of any installment of principal or interest on the Note or any other sum secured hereby when due and any applicable grace period shall have expired; or
- (b) Borrower, Grantor, or any guarantor of the indebtedness secured hereby as applicable shall file a voluntary petition in bankruptcy or such a petition shall be filed against Borrower, Grantor, or any guarantor and is not dismissed within 60 days after filing; or if Borrower, Grantor, or any guarantor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Borrower, Grantor, or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or
- (c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Borrower, Grantor, or any guarantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Borrower, Grantor, or any guarantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of

Borrower, Grantor, or any affected guarantor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantor which shall become a lien on the Trust Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

(e) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation, or warranty contained in any agreement between Borrower and Beneficiary or between Grantor and Beneficiary that is not timely cured.

**3.02 Rights and Remedies on Default.** Upon the occurrence of any event of default and at any time thereafter, Beneficiary may exercise any one or more of the following rights and remedies:

(a) The right at its option by notice to Grantor to declare the entire indebtedness secured hereby immediately due and payable.

(b) With respect to all or any part of the Property, the right to foreclose by judicial foreclosure in accordance with applicable law.

(c) The right to have the Trustee sell the Trust Estate in accordance with the Deed of Trust Act of the State of Oregon and the Uniform Commercial Code of the State of Oregon where applicable, at public auction to the highest bidder. Any person except Trustee may bid at the Trustee's sale. The power of sale conferred by this Deed of Trust and the law is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

(d) With respect to all or any part of the Trust Estate that constitutes personalty, the rights and

remedies of a secured party under the Oregon Uniform Commercial Code.

(e) The right, without notice to Grantor, to terminate the license granted to Grantor to collect the Cash Collateral without taking possession, and to demand, collect, receive, sue for, attach and levy against the Cash Collateral in Beneficiary's name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Beneficiary, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Grantor deposited with Beneficiary, upon any indebtedness secured hereby and in such order as Beneficiary may determine. In furtherance of this right, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary, and payments by such tenant or user to Beneficiary in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.

(f) The right to have a receiver appointed to take possession of any or all of the Trust Estate, with the power to protect and preserve the Trust Estate and to operate the Trust Estate preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the indebtedness secured hereby. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Trust Estate exceeds the indebtedness by a substantial amount. Grantor hereby irrevocably consents to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not disqualify a person from serving as receiver.

(g) Subject to any limitations imposed by law, the right to obtain a deficiency judgment in the event the net sale proceeds of any foreclosure sale are insufficient to pay the entire unpaid indebtedness secured hereby.

(h) Any other right or remedy provided in this Deed of Trust, the Note, any other agreement between Grantor and Beneficiary, or under law.

**3.03 Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee

this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor or Beneficiary, may purchase at such sale.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest, all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

**3.04 Due on Sale or Increase in Interest Rate on Sale.** If there is any conveyance of the whole or any part of the Property, whether by deed, contract, further encumbrance, or otherwise, lease of the same (other than a lease of any portion of the space in the improvements on the Property in the ordinary course of business without an option to purchase) without Beneficiary's prior written consent, or any transfer of capital stock or partnership interests in Grantor without Beneficiary's prior written consent, Beneficiary or other holder may declare all obligations secured hereby immediately due and payable.

In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor herein named, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named,



without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

**3.05 Attorney Fees.** In the event suit, action, or arbitration proceeding is instituted to enforce any of the terms of this Deed of Trust Beneficiary shall be entitled to recover from Grantor such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial, on any appeal, and in any bankruptcy proceeding. All reasonable expenses incurred by Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, demanding payment, attorneys' opinions, or title insurance, whether or not any court action is involved, shall become a part of the indebtedness secured hereby, payable on demand, and shall bear interest at the Note Rate from the date of expenditure until paid.

#### ARTICLE IV MISCELLANEOUS

**4.01 Governing Law.** This Deed of Trust, shall be governed by the laws of the State of Oregon, without regard to that state's conflict of laws.

**4.02 Modification.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**4.03 Inspections and Appraisals.** Beneficiary or its agents may enter upon the Property at any reasonable times to inspect or appraise it, whether or not any default exists hereunder. If Grantor refuses to permit such inspection or appraisal, Beneficiary may specifically enforce performance of this provision. Grantor agrees to pay the cost of all appraisals required by Beneficiary in its sole discretion (a) to comply with (i) any applicable statute or regulation, or (ii) the request or directive (whether or not having the force of law) of any regulatory authority with jurisdiction over Beneficiary, (b) to comply with Beneficiary's policies concerning appraisals, or (c) at any time after the occurrence of an event of default. All such appraisal costs shall become a part of the indebtedness secured hereby and shall be payable on demand, together with interest thereon at the highest rate applicable to any such indebtedness.



**4.04 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

**4.05 Notices.** Whenever Beneficiary, Grantor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any communication which is mailed as provided above shall be deemed delivered 72 hours after mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**4.06 Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**4.07 Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially unsecured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust. Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

**4.08 No Merger.** If both the lessor's and lessee's estates under any lease or portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the

separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

#### 4.09 Hazardous Substances.

(a) Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect, including without limitation the statutes listed below:

Federal Resource Conservation and Recovery Act of 1979, 42 U.S.C. Section 6901 et seq.

Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.

Federal Clean Air Act, 42 U.S.C. Sections 7401- 7626.

Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 135 et seq.

Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.

Federal Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.

Oregon Revised Statutes, Chapter 466, Oregon Revised Statutes, Chapter 468

The Northwest Interstate Compact on Low-Level Radioactive Waste Management, Oregon Revised Statutes, Section 469.93.

(b) Grantor will indemnify and hold Beneficiary harmless from and against any and all claims, demands, damages, costs, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceedings, (including attorneys' fees), arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the certifications contained herein or in any other document executed by Grantor in connection with the loan evidenced by the Note, (ii) any activities on the Property during Grantor's ownership, possession or control of the Property which directly or indirectly result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances, (iii) the discovery of hazardous or toxic waste or substances on the Property, or the discovery of hazardous or toxic waste or substances on any other property caused by activities on the Property, or (iv) the clean-up of hazardous or toxic waste or substances from the Property or the clean-up of hazardous or toxic waste or substances from any other property caused by activities on the Property. Grantor acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of hazardous or toxic waste or substances from the Property or from any other properties which become contaminated with hazardous or toxic waste or substances as a result of the contamination of or activities on the Property.

(c) Beneficiary and its representatives may enter the Property at any time for the purpose of conducting an environmental audit, committing only such injury to

the Property as may be necessary to conduct the environmental audit. Beneficiary shall not be required to remedy any such injury or compensate Grantor therefor. Grantor shall cooperate in all respects in the performance of the audit. Grantor shall pay the costs of any environmental audit if either a default exists under this Deed of Trust at the time Beneficiary arranges to have the audit performed or the audit reveals a default pertaining to hazardous substances. If Grantor refuses to permit Beneficiary or its representatives to conduct an environmental audit on the Property, Beneficiary may specifically enforce performance of this provision.

#### 4.10 Access Laws.

(a) Grantor agrees that the Property shall at all times strictly comply with the applicable requirements of the Americans with Disabilities Act of 1990 (including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities); the Fair Housing Amendments Act of 1988; all other federal and state and local laws and ordinances related to disabled access; and all rules, regulations, and orders issued pursuant thereto; all as amended from time to time (collectively the "Access Laws"). At any time Beneficiary may require Grantor to provide a certificate of compliance with the Access Laws and indemnification in a form reasonably acceptable to Beneficiary. Beneficiary may also require a certificate of compliance with the Access Laws from an architect, engineer, or other third party acceptable to Beneficiary.

(b) Notwithstanding any provisions set forth herein or in any other document, Grantor shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Grantor's responsibilities for compliance with the Access Laws without the prior written approval of Beneficiary. In connection with any such approval, Beneficiary may require a certificate of compliance with the Access Laws from an architect, engineer, or other person acceptable to Beneficiary.

(c) Grantor agrees to give prompt notice to Beneficiary of any claims of violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any of the Access Laws.

(d) Grantor shall indemnify and hold harmless Beneficiary from and against any and all claims, demands, damages, costs, expenses, losses, liabilities,

penalties, fines, and other proceedings, including without limitation reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with any of the Access Laws. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure.

**4.11 Authorization.** Grantor warrants that Grantor has full authority to enter into this Deed of Trust and in so doing is not violating any law or regulation or agreement with third parties, and Grantor has taken all such action as may be necessary or appropriate to make this Deed of Trust binding on Grantor and, upon request, shall deliver certified copies of such action to Beneficiary. If Grantor is not an individual, then the person or persons signing on behalf of Grantor represent and warrant to Beneficiary that he or she was authorized to execute this Deed of Trust on behalf of Grantor, that all actions required for Grantor to enter into this Deed of Trust have been taken, and that he or she is executing this Deed of Trust on behalf of Grantor.

In Witness Whereof, Grantor has executed this Deed of Trust as of the day and year first above written.

## GRANTOR:

A.A.A. PROPERTIES, INC.

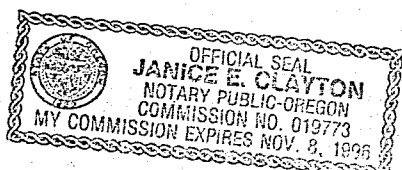
By Edward H. AndersonIts President

STATE OF OREGON )

COUNTY OF )

SS

This instrument was acknowledged before me on this 8th day of Dec 1994, by Edward H. Anderson as President of A.A.A. Properties, Inc., an Oregon corporation.



Janice E. Clayton  
Notary Public for Oregon  
My commission expires: 11/8/96

EXHIBIT "A"Legal Description:

Lots 44 and 45 of Balsiger Tracts, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.



EXHIBIT "B"

38261

Permitted Encumbrances:

November 18, 1996, Trust Deed with Phil L. Andersch, as grantor, and Liberty Savings & Loan Association, as beneficiary, recorded November 18, 1986, in Volume M86 page 21067, Mortgage records of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co the 20th day  
of Dec A.D., 19 94 at 11:07 o'clock A M.. and duly recorded in Vol. M94  
of Mortgages on Page 38239

FEE \$120.00

Evelyn Biehn - County Clerk

By Pauline J. Millenore