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MTC 43170-KR

AFTER RECORDING RETURN TO:

UNTIL A CHANGE IS REQUESTED,
ALL TAX STATEMENTS SHALL BE
SENT TO:

George L. Hall
Senior Vice President
Klamath First Federal Savings
and Loan Association
540 Main Street
Klamath Falls, Oregon 97601

Fay Family LLC
c/o Darrell Rusth
Suite A
2316 S. Sixth Street
Klamath Falls, Oregon 97601

LINE OF CREDIT INSTRUMENT

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

Klamath Surgery Center LLC, Klamath Surgeons LLC, Fay Family LLC,
Mark T. Fay, M.D., Christine L.C. Fay, and Glenn-Eric Hager, M.D.

Grantors

William L. Sisemore,

Trustee

Klamath First Federal Savings and Loan Association

Beneficiary

The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument is \$2,430,892.00.

The maturity date of the credit agreement secured by this line of credit instrument, exclusive of any option to renew or extend such maturity date, September 1, 2018.

The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument may be exceeded by advances to complete construction pursuant to ORS 36.155(2)(c).

Loan No. 09-09-16678

#090-09-16678

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

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This Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (hereinafter called "Deed of Trust") is made this ~~January~~^{February} 2nd, 1998, between Klamath Surgery Center LLC, Klamath Surgeons LLC, Fay Family LLC, Mark T. Fay, M.D., Christine L.C. Fay, and Glenn-Eric Hager, M.D. (hereinafter called "Grantors"); William L. Sisemore, whose address is 110 North Sixth Street, Klamath Falls, Oregon 97601 (hereinafter called "Trustee"); and Klamath First Federal Savings and Loan Association, the address for which is 540 Main Street, Klamath Falls, Oregon 97601 (hereinafter called "Beneficiary"),

WITNESSETH:

That Grantors do 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 Grantors now have 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 Grantors, 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 Grantors in and to all tangible personal property (the "Personal Property") now or hereafter owned by Grantors 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, machinery, tools, insurance proceeds, equipment

(including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs, maintenance, and all other equipment of every kind), lobby and all other indoor and outdoor furniture, rugs, carpets, and other floor coverings, all inventory related to the operation of the Property and any business operated thereon by Grantors, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and office maintenance and other supplies and all proceeds thereof;

Together With all right, title, and interest of Grantors in the funds deposited pursuant to Section 1.06 or Section 1.07;

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 Grantors now have 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;

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 Grantors 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 Grantors 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 Grantors 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 Grantors, 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 \$2,430,892.00 with interest thereon, evidenced by that certain Promissory Note of even date herewith (the "Note") with a maturity date of September 1, 2018, executed by Grantors, which has been delivered to, and is payable to, the order of Beneficiary and which, by this reference, is made a part hereof, and any and all modifications, extensions and renewals thereof.

2. Payment of all sums which may become due from Grantors 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 Grantors 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 Grantors 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 Grantors of all sums advanced by Beneficiary to or on behalf of Grantors 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 Grantors of all attorneys' fees and costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the Bankruptcy Act affecting Grantors 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.

3. Payment of all other sums, with interest thereon, which may hereafter be loaned to Grantors, their successors, or assigns, by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

4. Payments of all of the obligations of Grantors under any loan agreement between Grantors and Beneficiary related to the loan evidenced by the Note (hereinafter referred to as the "Loan Agreement").

This Deed of Trust, the Note, the Loan Agreement, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Documents."

ARTICLE I COVENANTS AND AGREEMENTS OF GRANTORS

Grantors hereby covenant and agree:

1.01 Maintenance of the Property. The Property shall be maintained in good condition at all times. Grantors shall promptly make all necessary repairs, replacements, and renewals so that the value of the Property shall be maintained. Grantors shall not commit or permit any waste on the Property. Grantors shall comply with all laws, ordinances, regulations, and private restrictions affecting the Property. To the extent that the Property constitutes commercial property, Grantors 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. Grantors shall not demolish or remove any improvements from the Property without the written consent of Beneficiary.

1.02 Required Insurance. Grantors 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 "all risk coverage," with a "Replacement Cost Endorsement," 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), and (ii) an amount sufficient to prevent Grantors 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.

(b) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "all risk coverage."

(c) 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.

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 and which shall provide at a minimum that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantors 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 Grantors. Grantors shall furnish Beneficiary with an original policy of all policies of required insurance. If Beneficiary consents to Grantors providing any of the required insurance through blanket policies carried by Grantors and covering more than one (1) location, then Grantors 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, Grantors 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 Grantors fail 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 Grantors will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantors, the amount of all such premiums shall be secured by this Deed of Trust.

(c) In the event of loss, Grantors shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantors. Proceeds shall be paid directly to Beneficiary who may compromise with any insurance company and make a final settlement which shall be binding upon Grantors. 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 Grantors 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 Grantors 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 Grantors, then Grantors 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) Grantors waive any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantors, the Trust Estate, Grantors' property, or the property of others under Grantors' control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Grantors 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 Grantors 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 Grantors have 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 Grantors; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantors shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantors waive 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 Grantors.

1.06 Taxes and Liens. Grantors 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. Grantors 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 1.10, the lien of taxes and assessments not delinquent, and except as hereinafter otherwise provided. Grantors 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, Grantors shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantors have 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 Reserves. If Grantors and Beneficiary do not otherwise expressly agree in writing, Beneficiary may require Grantors to maintain reserves for payment of taxes (including special assessments and other charges against the Trust Estate by governmental or quasi-governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to Beneficiary of an amount determined by Beneficiary to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Grantors shall upon demand pay such additional sum as Beneficiary shall determine to be necessary to cover the required payment. If Grantors desire to carry a package plan of insurance that includes coverage in addition to that required under this Deed of Trust, Beneficiary, if allowed by law, may at its option establish and administer a reserve for that purpose. In such event the premium attributable to the required insurance coverage shall be quoted separately, and Beneficiary may permit Grantors to furnish a certificate of insurance rather than deposit the policy as required above. If at any time Beneficiary holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, Beneficiary may, at its discretion, pay only that portion of the premium attributable to the required insurance coverage. If the blanket policy does not permit such partial payment, Beneficiary may use the reserve funds for the premium on a new, separate policy providing the required insurance coverage and allow the package policy to lapse. Beneficiary shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Grantors agree that Beneficiary may commingle reserve funds with other funds of Beneficiary and need not invest them for the benefit of Grantors. Grantors agree that Beneficiary need not pay Grantors interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

1.08 Expenditures by Beneficiary. If Grantors shall fail to comply with any provision of this Deed of Trust, Beneficiary may, at its option, on Grantors' 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 is applicable, to portions of the unpaid balance at the highest rate applicable to any portion of the principal balance of the Note (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. The following notice is given pursuant to ORS 746.201:

WARNING

Unless Grantors provide Beneficiary with evidence of the insurance coverage as required herein, Beneficiary may purchase insurance at Grantors' expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantors' interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantors make or any

claim made against Grantors. Grantors may later cancel this coverage by providing evidence that Grantors have obtained property coverage elsewhere.

Grantors are responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to the indebtedness secured hereby. If the cost is added to the indebtedness secured hereby, the interest rate on the indebtedness secured hereby will apply to this added amount. The effective date of coverage may be the date the prior coverage lapsed or the date Grantors failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance Grantors can obtain on Grantors' own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.09 Utilities. Grantors shall pay or cause to be paid when due all utility charges which are incurred by Grantors 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.

1.10 Warranty: Defense of Title. Grantors warrant that Grantors hold 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"). Grantors warrant 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 Grantors' title or the interest of Beneficiary under this Deed of Trust, Grantors shall defend the action at Grantors' expense. If any Permitted Encumbrance is a lien, Grantors 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.

1.11 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 Grantors and Beneficiary in connection with the condemnation. If any proceeding in condemnation is filed, Grantors shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantors hereby assign to Beneficiary the net proceeds of any condemnation award.

1.12 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 Grantors 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) Grantors may lawfully pay the tax or charge imposed; and
- (b) Grantors pay the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted.

1.13 Inspections. Beneficiary, or its agents, representatives or workmen, is authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

1.14 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.

1.15 Accounting. Grantors will keep and maintain or will cause to be kept and maintained in accordance with sound accounting practice accurate and proper books of record and account relating to the Property. Grantors shall permit Beneficiary to examine the books of account and other records of Grantors, to discuss the affairs, finances and accounts of Grantors and to be informed as to the same by Grantors, all at such reasonable times and intervals as Beneficiary may desire. At the request of Beneficiary, Grantors will, at their own cost and expense, furnish to Beneficiary within thirty (30) days after the end of each fiscal year, annual financial statements of Grantors and copies of the balance sheet and

operating statements relating to the Property for such year, in reasonable detail and in form and substance satisfactory to Beneficiary. In addition, at the request of Beneficiary, Grantors shall furnish Beneficiary, within thirty (30) days from the end of each calendar year a rent roll, including but not limited to a listing of each tenant, the space occupied, the amount of rent and the expiration of the lease, together with unaudited statements setting forth rental income (itemized as to source, itemized operating expenses, and net income before federal income taxes) relating to the Property for such month, certified to as being correct by the Grantors. In the event Grantors fail to furnish any of the financial statements hereinabove required, Beneficiary may cause an audit to be made of Grantors' books and records, at Grantors' sole cost and expense.

1.16 Repayment of Advances. Upon receipt of notice, the Grantors shall repay immediately all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Note Rate, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of such notice will, at Beneficiary's option, constitute an event of default hereunder; or Beneficiary may, at its option, commence an action against Grantors for the recovery of such expenditure or advance and interest thereon, and in such event Grantors agree to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee at trial and on appeal.

ARTICLE II SECURITY AGREEMENT

2.01 Creation of Security Interest. Grantors hereby grant to Beneficiary a security interest in (a) the Personal Property located on or at the Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Grantors contained in any of the Loan Documents, and (b) the Cash Collateral.

2.02 Warranties, Representations, and Covenants of Grantors. Grantors hereby warrant, represent and covenant as follows:

(a) Except for the security interest granted hereby, Grantors are, and as to portions of the Personal Property and Cash Collateral to be acquired after the date hereof will be, the sole owners of the Personal Property and Cash Collateral, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantors will notify Beneficiary of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

- (b) Grantors will not lease, sell, convey, or in any manner transfer the Personal Property or Cash Collateral without the prior written consent of Beneficiary.
- (c) The Personal Property is not used or bought for personal, family or household purposes.
- (d) The Personal Property will be kept on or at the Property and Grantors will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantors with an article of equal suitability owned by Grantors free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.
- (e) Grantors maintain a place of business in the state of Oregon, and Grantors will immediately notify Beneficiary in writing of any change in their place of business.
- (f) At the request of Beneficiary, Grantors will join Beneficiary in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Oregon in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices whenever filing is deemed by Beneficiary to be necessary or desirable.
- (g) All covenants and obligations of Grantors contained herein relating to the Trust Estate shall be deemed to apply to the Personal Property and Cash Collateral, whether or not expressly referred to herein.
- (h) This Deed of Trust constitutes a security agreement and a fixture filing as those terms are used in the Uniform Commercial Code of Oregon.

ARTICLE III ASSIGNMENT OF LEASES AND RENTS

3.01 Assignment. Grantors hereby assign to Beneficiary and grant to Beneficiary a security interest in all Leases as security for performance of all obligations secured by this Deed of Trust.

3.02 Representations and Warranties. Grantors represent and warrant as follows:

(a) Grantors have good right, title and interest in and to the Leases and Cash Collateral and good right to assign the same, and that no other person has any right, title or interest therein.

(b) Grantors have duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Leases on Grantors' part to be kept, observed and performed.

(c) The existing Leases, if any, are valid and unmodified and are in full force and effect.

(d) Grantors have not previously sold, assigned, transferred, mortgaged, pledged or granted a security interest in the Cash Collateral, whether now due or hereafter to become due.

(e) None of the Cash Collateral due and issuing from the Property or from any part thereof has been collected for any period in excess of one (1) month from the date hereof, and that payment of any of same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(f) Grantors have not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Cash Collateral.

(g) None of the tenants under any existing Leases are in default of any of the terms thereof.

3.03 Covenants of Performance. Grantors covenant and agree as follows:

(a) Grantors shall observe, perform, and discharge, duly and punctually, all of the obligations of the Leases on the part of Grantors to be kept, observed, and performed; and shall give prompt notice to Beneficiary of any failure on the part of Grantors to observe, perform, and discharge same.

(b) Grantors shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposits heretofore delivered to Grantors have been retained by Grantors or assigned and delivered to Beneficiary as the case may be.

(c) Grantors shall enforce the performance of each and every obligation, term, covenant, condition, and agreement in the Leases by any tenant to be performed, and shall notify Beneficiary of the occurrence of any material default under the Leases.

(d) Grantors shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Grantors or any tenant thereunder at the expense of Grantors.

3.04 Prior Approval for Actions Affecting Leases. Grantors, without the prior written consent of Beneficiary, further covenant and agree as follows:

(a) Grantors shall not receive or collect any Cash Collateral from any present or future tenant of the Property or any part thereof for a period of more than one (1) month in advance (whether in cash or by promissory note) nor pledge, transfer, mortgage, grant a security interest in, or otherwise encumber or assign future payments of Cash Collateral.

(b) Grantors shall not waive, forgive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Leases having a term in excess of one (1) year of or from any obligations, covenants, conditions, and agreements by such tenant to be kept, observed, and performed, including the obligation to pay the Cash Collateral thereunder in the manner and at the place and time specified therein.

(c) Grantors shall not cancel, terminate, or consent to any surrender of any of the Leases having a term in excess of one (1) year, nor commence any action of ejectment or any summary proceedings for dispossession of the tenant under any such Leases, nor exercise any right of recapture of the Property provided in any such Leases, nor modify or in any way alter the terms thereof.

(d) Grantors shall not lease any part of the Property for a term in excess of one (1) year, nor renew or extend the term of any Leases of the Property other than month-to-month rental agreements unless an option therefor was originally so reserved by tenants in the Leases.

(e) Grantors shall not relocate any commercial tenant within the Property nor consent to any modification of the express purposes for which the Property has been leased, nor consent to any subletting of the Property or any part thereof, or to any assignment of the Leases by any commercial tenant thereunder or to any assignment or further subletting of any sublease.

3.05 Rejection of Leases. Grantors further covenant and agree as follows:

(a) In the event any tenant under the Leases should become the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Grantors covenant and agree that in

the event any of the Leases are so rejected, no damage settlement shall be made without the prior written consent of Beneficiary.

(b) Grantors will request that any check in payment of damages for rejection or termination of any such Lease will be made payable both to the Grantors and Beneficiary.

(c) Grantors hereby assign any such payment to Beneficiary and further covenant and agree that upon request of Beneficiary, they will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured by this Deed of Trust in such manner as Beneficiary may elect.

3.06 License to Collect Cash Collateral. As long as there shall exist no default by Grantors in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the Note or contained in the Leases, Grantors shall have the right under a license granted hereby (but limited as provided in the following paragraph) to collect, but not prior to accrual, all of the Cash Collateral arising from or out of said Leases or any renewals, extensions and replacements thereof, or from or out of the Property or any part thereof. Grantors shall receive such Cash Collateral and hold the Cash Collateral, together with the right and license herein granted as a trust fund to be applied, and Grantors hereby covenant to so apply them, as required by Beneficiary, first to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second to the costs of insurance, maintenance and repairs required by the terms of this Deed of Trust; third to satisfaction of all obligations under the Leases; and fourth to the payment of interest, principal and any other sums becoming due under the Note and Deed of Trust, before using any part of the same for any other purposes. Upon the conveyance by Grantors and their successors and assigns of Grantors' interest in the Property, all right, title, interest and powers granted under the license aforesaid shall automatically pass to and may be exercised by each subsequent owner.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 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) Grantors 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 Grantors or any guarantor and is not dismissed within 60 days after filing; or if Grantors 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 Grantors 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 Grantors 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 Grantors 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 Grantors 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 Grantors 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 of the Loan Documents or any part thereof, not referred to in this Section 4.01 subject to any applicable cure period specified in the Loan Documents; or

(f) Any guaranty of the loan secured hereby ceases to be in full force and effect or any guarantor asserts that any guaranty is not in full force and effect.

4.02 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 Grantors 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 Grantors, 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 Grantors, to terminate the license granted to Grantors 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 Grantors 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. Grantors hereby irrevocably consent to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:

- (1) Use, operate, manage, control, and conduct business on the Trust Estate;
- (2) Make expenditure for all maintenance, renewals, replacements, alterations, additions, and improvements to the Trust Estate as in its judgment are proper;
- (3) Insure and reinsure the Trust Estate and all risks incidental to its possession, operation, and management of the Trust Estate;
- (4) Collect the Cash Collateral and any other revenues and income from the Trust Estate and apply such sums to the expenses of use, operation, and management in such priority as the receiver deems appropriate. Grantors shall promptly turn over to the receiver all documents, books, records, papers, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantors' behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions in forcible detainer;
- (5) Cancel or terminate any Lease or agreement for any cause for which Grantors would be entitled to cancel the same;
- (6) Extend or modify any Lease and make any new Lease on any portion of the Trust Estate. Any such instruments shall be binding upon Grantors and all persons whose interests in the Trust Estate are subordinate to this Deed of Trust, and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge, or indebtedness, satisfaction of the foreclosure decree or issuance of any certificate of sale or deed to any purchaser;
- (7) Complete any construction in progress on the Property, and in that connection, pay bills, borrow funds,

employ contractors, and make any changes in plans or specifications as the receiver deems appropriate; or

(8) If the revenues and income are insufficient to pay expenses, the receiver may borrow such sums as the receiver deems necessary for the purposes stated in this paragraph. The amounts borrowed shall bear interest from the date of expenditure until repaid at the same rate per annum as is accruing on such borrowing. Such sums shall become a part of the balance secured by this Deed of Trust and shall be payable by Grantors on demand.

(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 Loan Documents, or under law.

4.03 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 Grantors, 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, Grantors 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.

4.04 Sale of Personal Property. Beneficiary shall give Grantors reasonable notice of the time and place of any public sale of any Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten days before the time of the sale or disposition.

4.05 Due on Sale or Increase in Interest Rate on Sale. Grantors agree and acknowledge that the indebtedness evidenced by the Note is personal to Grantors, and that Grantors' personal responsibility and/or control of the Property is a material inducement to Beneficiary to agree to enter into this transaction. 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 Grantors without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary, and Beneficiary or other holder may declare the entire unpaid balance immediately due and payable, or, at its sole option, it may consent to such conveyance, or transfer of capital stock or partnership interest in writing and may increase the interest rate on the Note, change the maturity date of the Note, modify the loan terms, or impose whatever other conditions it shall deem necessary to compensate it for such increased risk. Any increase in interest shall entitle the holder to increase monthly payments on the loan evidenced by the Note so as to retire the obligation within the original stipulated time. In the event Grantors shall request the consent of Beneficiary in accordance with the provisions of this Section 4.05, Grantors shall deliver a written request to Beneficiary, together with such information as Beneficiary may reasonably request regarding such conveyance, further encumbrance, lease or transfer of capital stock or partnership interest and shall allow Beneficiary 30 days to evaluate such request. In the event Beneficiary approves such conveyance, encumbrance, lease, or transfer of capital stock or partnership interest, Grantors shall pay Beneficiary a processing fee in an amount to be determined by Beneficiary but in no event less than Five Hundred Dollars to compensate Beneficiary for its costs in processing such request. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to any further or successive transaction. The execution and delivery by the Grantors of any joint venture agreement, partnership agreement, declaration of trust, option agreement, or other instrument whereunder any other person or corporation may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a conveyance or assignment of Grantors' interest in the Property for the purposes of this section, and shall require the prior written consent of Beneficiary. In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantors herein named, Beneficiary may, without notice to Grantors 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 Grantors herein named, without in any way vitiating or discharging Grantors' liability hereunder or the obligations hereby secured.

4.06 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 Grantors 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 V MISCELLANEOUS

5.01 Governing Law. This Deed of Trust, shall be governed by the laws of the State of Oregon. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable.

5.02 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.

5.03 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 Grantors refuse to permit such inspection or appraisal, Beneficiary may specifically enforce performance of this provision. Grantors agree 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.

5.04 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 Grantors of Trustee's fees, Trustee shall reconvey to Grantors, 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."

5.05 Notices. Whenever Beneficiary, Grantors 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.

5.06 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 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.

5.08 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.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantors' request and Beneficiary shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether such liens, charges or encumbrances are released.

5.10 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 Grantors 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.

5.11 Late Charge. Grantors recognize that default by Grantors in making the payments under the Note and/or in any of the other Loan Documents when due will result in Beneficiary incurring additional expense servicing the loan, loss to Beneficiary of the use of the money due, and frustration to Beneficiary in meeting its other loan commitments. In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, Beneficiary may collect, and the Grantors agree to pay with such payment, a "late charge" of 5 percent of any overdue amount as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate of Beneficiary and the Grantors of a fair, average compensation due to the failure of the Grantors to make timely payments. Such late charge shall be paid without prejudice to the right of Beneficiary to collect any other amounts provided to be paid or to declare a default hereunder.

5.12 Hazardous Substances.

(a) Grantors represent and warrant to Beneficiary that to the best of Grantors' 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 Grantors' ownership, possession or control of the Property. Grantors agree to provide written notice to Beneficiary immediately upon Grantors becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantors 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.

(b) Grantors 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 Grantors in connection with the loan evidenced by the Note, (ii) any activities on the Property during Grantors' 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. Grantors acknowledge that they 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 Grantors therefor. Grantors shall cooperate in all respects in the performance of the audit. Grantors 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 Grantors refuse to permit Beneficiary or its representatives to conduct an

environmental audit on the Property, Beneficiary may specifically enforce performance of this provision.

5.13 Access Laws.

(a) Grantors agree 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 Grantors 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, Grantors shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Grantors' 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) Grantors agree 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) Grantors 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 Grantors under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure.

GRANTORS:

KLAMATH SURGERY CENTER LLC

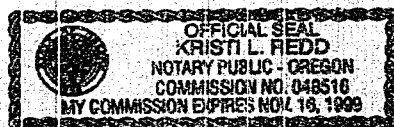
By Mark T. Fay, M.D., Manager
 Mark T. Fay, M.D., Manager

By Glenn-Eric Hager, M.D., Manager
 Glenn-Eric Hager, M.D., Manager

STATE OF OREGON)

COUNTY OF KLAMATH) SS

This instrument was acknowledged before me on February 2, 1998,
 by Mark T. Fay, M.D., and Glenn-Eric Hager, M.D., as managers of Klamath Surgery
 Center LLC, an Oregon limited liability company.



Kristi L. Redd
 Notary Public for Oregon
 My commission expires: 11/16/99

KLAMATH SURGEONS LLC

By Mark T. Fay, M.D., Manager
 Mark T. Fay, M.D., Manager

By Glenn-Eric Hager, M.D., Manager
 Glenn-Eric Hager, M.D., Manager

STATE OF OREGON)
COUNTY OF KLAMATH) SS
)

This instrument was acknowledged before me on February 2, 1998,
by Mark T. Fay, M.D., and Glenn-Eric Hager, M.D., as managers of Klamath Surgeons
LLC, an Oregon limited liability company.



Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/99

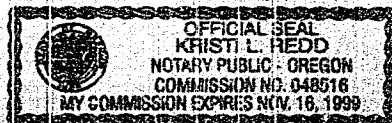
FAY FAMILY LLC

By Mark T. Fay, M.D. Manager
Mark T. Fay, M.D., Manager

By Christine L. C. Fay, Manager
Christine L. C. Fay, Manager

STATE OF OREGON)
COUNTY OF KLAMATH) SS
)

This instrument was acknowledged before me on February 2, 1998,
by Mark T. Fay, M.D. and Christine L. C. Fay, Manager, as managers of Fay Family LLC,
an Oregon limited liability company.

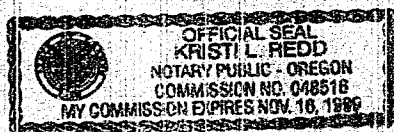


Kristi L. Redd
Notary Public for Oregon
My commission expires: 11/16/99

Mark T. Fay, M.D.
 Mark T. Fay, M.D.

STATE OF OREGON)
) SS
 COUNTY OF KLAMATH)

This instrument was acknowledged before me on February 2, 1998,
 by Mark T. Fay, M.D.

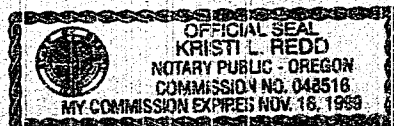


Kristi L. Redd
 Notary Public for Oregon
 My commission expires: 11/16/99

Christine L.C. Fay
 Christine L.C. Fay

STATE OF OREGON)
) SS
 COUNTY OF KLAMATH)

This instrument was acknowledged before me on February 2, 1998,
 by Christine L.C. Fay.

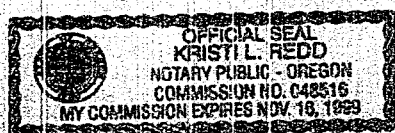


Kristi L. Redd
 Notary Public for Oregon
 My commission expires: 11/16/99

Glenn-Eric Hager M.D.
 Glenn-Eric Hager, M.D.

STATE OF OREGON)
) SS
 COUNTY OF *KLAMATH*)

This instrument was acknowledged before me on *February 2*, 1998,
 by Glenn-Eric Hager, M.D.



Kristi L. Redd
 Notary Public for Oregon
 My commission expires: *11/16/99*

EXHIBIT "A"
LEGAL DESCRIPTION

3346

A parcel of land situated in the SW 1/4 of the SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point which is distant 1320 feet Easterly from the Section corner common to Sections 20, 29, 30 and 19 Township 38 South, Range 9 East of the Willamette Meridian, on Section line between Sections 20 and 29, and North 360 feet parallel to section line between Sections 19 and 20 to a point; thence North and parallel to Section line between Sections 19 and 20 a distance of 720 feet to a point which is the center of the Westerly terminal of Ashland Street; thence Westerly and parallel to Section line between Sections 20 and 29 a distance of 346 feet to State Highway; thence South along said State Highway a distance of 360 feet to a point; thence Southeasterly along State Highway to place of beginning; all in Section 20, Township 38 South, Range 9 East of the Willamette Meridian, EXCEPTING that portion shown in Book 95 of Deeds page 215, as sold to Klamath County, Oregon on April 30, 1931.

SAVING AND EXCEPTING the following described property:

A strip of land situated in the SW 1/4 SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northwest corner of that parcel conveyed on page 215 of Volume 95 of the Deed Records of Klamath County; thence West along the Northerly boundary of that tract of land conveyed on page 146 of Volume 61 of the Klamath County Deed Records 5.3 feet, more or less, to an iron pin monument which is 40.0 feet Westerly from the centerline of Biehn Street (formerly the Dalles-California Highway) as the same is presently located and constructed; thence South 0 degrees 19' 30" West parallel to and 40.0 feet Westerly from the said centerline of Biehn Street 635.3 feet, more or less, to an iron pin monument on the Northerly boundary of Lakeport Blvd., as the same is presently located and constructed; thence South 44 degrees 51' East along the Northerly boundary of Lakeport Blvd. 12.7 feet to a point on the Westerly boundary of that tract conveyed on page 215 of Volume 95 of Klamath County Deed Records; thence North 644.3 feet, more or less, to the point of beginning.

EXHIBIT "A"
LEGAL DESCRIPTION

The building, commonly referred to as Klamath Ophthalmology Clinic, consisting of approximately 6,081 square feet and common area, at 2640 Biehn Street, Klamath Falls, Oregon 97601, which building is situated on the real property described below, but said real property is not included with this conveyance.

A parcel of land situated in the SW 1/4 of the SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point which is distant 1320 feet Easterly from the Section corner common to Sections 20, 29, 30 and 19 Township 38 South, Range 9 East of the Willamette Meridian, on Section line between Sections 20 and 29, and North 360 feet parallel to section line between Sections 19 and 20 to a point; thence North and parallel to Section line between Sections 19 and 20 a distance of 720 feet to a point which is the center of the Westerly terminal of Ashland Street; thence Westerly and parallel to Section line between Sections 20 and 29 a distance of 346 feet to State Highway; thence South along said State Highway a distance of 360 feet to a point; thence Southeasterly along State Highway to place of beginning; all in Section 20, Township 38 South, Range 9 East of the Willamette Meridian, EXCEPTING that portion shown in Book 95 of Deeds page 215, as sold to Klamath County, Oregon on April 30, 1931.

SAVING AND EXCEPTING the following described property:

A strip of land situated in the SW 1/4 SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northwest corner of that parcel conveyed on page 215 of Volume 95 of the Deed Records of Klamath County; thence West along the Northerly boundary of that tract of land conveyed on page 146 of Volume 61 of the Klamath County Deed Records 5.3 feet, more or less, to an iron pin monument which is 40.0 feet Westerly from the centerline of Biehn Street (formerly the Dalles-California Highway) as the same is presently located and constructed; thence South 0 degrees 19' 30" West parallel to and 40.0 feet Westerly from the said centerline of Biehn Street 635.3 feet, more or less, to an iron pin monument on the Northerly boundary of Lakeport Blvd. as the same is presently located and constructed; thence South 44 degrees 51' East along the Northerly boundary of Lakeport Blvd. 12.7 feet to a point on the Westerly boundary of that tract conveyed on page 215 of Volume 95 of Klamath County Deed Records; thence North 644.3 feet, more or less, to the point of beginning.

EXHIBIT "A"
LEGAL DESCRIPTION

3348

The center building, commonly referred to as Klamath Surgery Center LLC, consisting of approximately 5,795 square feet and common area, at 2640 Biehn Street, Klamath Falls, Oregon 97601, which building is situated on the real property described below, but said real property is not included with this conveyance.

A parcel of land situated in the SW 1/4 of the SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point which is distant 1320 feet Easterly from the Section corner common to Sections 20, 29, 30 and 19 Township 38 South, Range 9 East of the Willamette Meridian, on Section line between Sections 20 and 29, and North 360 feet parallel to section line between Sections 19 and 20 to a point; thence North and parallel to Section line between Sections 19 and 20 a distance of 720 feet to a point which is the center of the Westerly terminal of Ashland Street; thence Westerly and parallel to Section line between Sections 20 and 29 a distance of 346 feet to State Highway; thence South along said State Highway a distance of 360 feet to a point; thence Southeasterly along State Highway to place of beginning; all in Section 20, Township 38 South, Range 9 East of the Willamette Meridian, EXCEPTING that portion shown in Book 95 of Deeds page 215, as sold to Klamath County, Oregon on April 30, 1931.

SAVING AND EXCEPTING the following described property:

A strip of land situated in the SW 1/4 SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northwest corner of that parcel conveyed on page 215 of Volume 95 of the Deed Records of Klamath County; thence West along the Northerly boundary of that tract of land conveyed on page 146 of Volume 61 of the Klamath County Deed Records 5.3 feet, more or less, to an iron pin monument which is 40.0 feet Westerly from the centerline of Biehn Street (formerly the Dalles-California Highway) as the same is presently located and constructed; thence South 0 degrees 19' 30" West parallel to and 40.0 feet Westerly from the said centerline of Biehn Street 635.3 feet, more or less, to an iron pin monument on the Northerly boundary of Lakeport Blvd. as the same is presently located and constructed; thence South 44 degrees 51' East along the Northerly boundary of Lakeport Blvd. 12.7 feet to a point on the Westerly boundary of that tract conveyed on page 215 of Volume 95 of Klamath County Deed Records; thence North 644.3 feet, more or less, to the point of beginning.

EXHIBIT "A"
LEGAL DESCRIPTION

3349

The building, commonly referred to as Ear, Nose & Throat Clinic, consisting of approximately 4,714 square feet and common area, at 2640 Biehn Street, Klamath Falls, Oregon 97601, which building is situated on the real property described below, but said real property is not included with this conveyance.

A parcel of land situated in the SW 1/4 of the SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point which is distant 1320 feet Easterly from the Section corner common to Sections 20, 29, 30 and 19 Township 38 South, Range 9 East of the Willamette Meridian, on Section line between Sections 20 and 29, and North 360 feet parallel to section line between Sections 19 and 20 to a point; thence North and parallel to Section line between Sections 19 and 20 a distance of 720 feet to a point which is the center of the Westerly terminal of Ashland Street; thence Westerly and parallel to Section line between Sections 20 and 29 a distance of 346 feet to State Highway; thence South along said State Highway a distance of 360 feet to a point; thence Southeasterly along State Highway to place of beginning; all in Section 20, Township 38 South, Range 9 East of the Willamette Meridian, EXCEPTING that portion shown in Book 95 of Deeds page 215, as sold to Klamath County, Oregon on April 30, 1931.

SAVING AND EXCEPTING the following described property:

A strip of land situated in the SW 1/4 SW 1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the Northwest corner of that parcel conveyed on page 215 of Volume 95 of the Deed Records of Klamath County; thence West along the Northerly boundary of that tract of land conveyed on page 146 of Volume 61 of the Klamath County Deed Records 5.3 feet, more or less, to an iron pin monument which is 40.0 feet Westerly from the centerline of Biehn Street (formerly the Dalles-California Highway) as the same is presently located and constructed; thence South 0 degrees 19' 30" West parallel to and 40.0 feet Westerly from the said centerline of Biehn Street 635.3 feet, more or less, to an iron pin monument on the Northerly boundary of Lakeport Blvd., as the same is presently located and constructed; thence South 44 degrees 51' East along the Northerly boundary of Lakeport Blvd. 12.7 feet to a point on the Westerly boundary of that tract conveyed on page 215 of Volume 95 of Klamath County Deed Records; thence North 644.3 feet, more or less, to the point of beginning.

EXHIBIT "B"Permitted Exceptions

The following exceptions are from the January 23, 1998, 3rd supplemental preliminary title report of AmeriTitle Title Insurance Company:

6. Rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.
7. Subject to high liability approval by Ticor Title Insurance Company and such additions or deletions as may be required thereby.
11. Reservations or exceptions in patents or in Acts authorizing the issuance thereof.
12. Any encroachments, unrecorded easements, violations of covenants, conditions and restrictions, and any other matters which would be disclosed by a correct survey.
13. Rights of parties in possession, or claiming to be in possession, other than above vestees.
14. Any statutory liens for labor or material, including liens for contributions due to the State of Oregon for unemployment compensation and for workmen's compensation, which have now gained or hereafter may gain priority over the lien of the insured mortgage, which liens do not now appear of record.

STATE OF OREGON, COUNTY OF KLAMATH: ss.

Filed for record at request of Amerititle the 3rd day
of February A.D., 19 98 at 11:43 o'clock A.M., and duly recorded in Vol. M98
of Mortgages on Page 3317

FEE \$180.00

By Bernetha G. Letsch, County Clerk
Kathleen Rose