

WHEN RECORDED, RETURN TO:  
Graham & James, LLP  
885 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022-4834

Attention: Koren Blair

Loan No. 240832

14-50495

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

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust") is made effective as of the 1st day of May, 1998, by and among **JEFFERSON SQUARE OF KLAMATH, L.L.C.**, an Oregon limited liability company ("Trustor"), whose address is 10875 Sprague River Road, Chiloquin, Oregon 97624, **FIRST AMERICAN TITLE GUARANTY COMPANY** ("Trustee"), whose address is 1850 Mt. Diablo Boulevard, Suite 300, Walnut Creek, California 94596, and **COLUMN FINANCIAL, INC.**, a Delaware corporation ("Beneficiary"), whose address is 3414 Peachtree Road, N.E., Suite 1140, Atlanta, Georgia 30326-1113.

**WITNESSETH:**

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, **IN TRUST WITH POWER OF SALE**, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Klamath, State of Oregon, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor therein or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

(C) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Trustor and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposals and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Trustor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(D) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor;

(E) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

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

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Beneficiary pursuant to this Deed of Trust or any other of the Loan Documents (as hereinafter defined) including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Replacement Reserve, the Lease Termination Payment Reserve and the Repair and Remediation Reserve (each as hereafter defined);

(H) All leases, licenses, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income and other benefits (collectively, the "Rents and Profits") of the Land or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied

to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however, the provisions contained in Section 1.11 hereinafter;

(I) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

(J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

(K) All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, trademarks, trade names, service marks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Trustor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

(L) All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

(N) All right, title and interest of Trustor in any insurance policies or binders now or hereafter relating to the Property, whether or not such insurance was requested or required by Beneficiary, including any unearned premiums thereon;

(O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (whether or not such insurance was requested or required by Beneficiary) and condemnation awards; and

(P) All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or

hereafter acquired by Trustor.

#### FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by, and interest and all other sums owed pursuant to, that certain Promissory Note (such Note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Deed of Trust and having a maturity date on the Tenth (10th) anniversary of the first required payment of principal and interest under the Note, made by Trustor to the order of Beneficiary in the principal face amount of TWO MILLION SIX HUNDRED AND NO/100 DOLLARS (\$2,600,000.00);

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Deed of Trust, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid; and

(3) Any and all additional advances made by Beneficiary to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Trustor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Trustor remains the owner of the Property at the time of such advances), together with interest thereon at the Default Interest Rate (as defined in the Note); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

(All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, upon written request of Beneficiary stating that all indebtedness 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 Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property



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."

## ARTICLE I. COVENANTS OF TRUSTOR

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Deed of Trust, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Trustor covenants and agrees as follows:

1.1 Warranties of Trustor. Trustor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Beneficiary, its successors and assigns, that:

1.1.1 Trustor has good and marketable fee simple title to the Property, subject only to those matters expressly set forth on Exhibit B attached hereto and by this reference incorporated herein (the "Permitted Exceptions"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and encumber its interest in the Property in the manner and form hereby done or intended. Trustor will preserve its interest in and title to the Property and will forever warrant and defend the same to Trustee and Beneficiary against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by Beneficiary in the event Beneficiary acquires title to the Property pursuant to any foreclosure;

1.1.2 No bankruptcy or insolvency proceedings are pending or contemplated by Trustor or, to the best knowledge of Trustor, against Trustor or by or against any endorser, cosigner or guarantor of the Note;

1.1.3 All reports, certificates, affidavits, statements and other data furnished by Trustor to Beneficiary in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

1.1.4 The execution, delivery and performance of this Deed of Trust, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be, and are, binding and enforceable against Trustor in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute (upon the giving of notice or the passage of time or both) a default under the partnership agreement, articles of incorporation or other organizational documents of Trustor or any contract or agreement of any nature to which Trustor is a party or by which Trustor or any of its property may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Trustor is subject;

1.1.5 Trustor is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or agency in

connection with or as a condition to the execution, delivery or performance of this Deed of Trust, the Note or the other Loan Documents which has not been so obtained or filed;

1.1.6 Trustor has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all Governmental Authorities and (ii) consents, approvals, waivers and notifications of partners, stockholders, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Trustor in connection with the execution and delivery of, and the performance by Trustor of its obligations under, the Loan Documents;

1.1.7 Trustor and, if Trustor is a partnership, the general partner of Trustor, have filed all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Trustor and its general partner, if any. Trustor and its general partner, if any, believe that their respective tax returns properly reflect the income and taxes of Trustor and said general partner, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit;

1.1.8 Trustor is not an "employee benefit plan", as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA and the assets of Trustor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101;

1.1.9 The Land and the Improvements and the intended use thereof by Trustor comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. The Land and Improvements constitute a separate tax parcel for purposes of *ad valorem* taxation. The Land and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements.

1.1.10 All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements approved by Beneficiary;

1.1.11 All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Trustor;

1.1.12 All curb cuts, drive ways and traffic signals shown on the survey delivered to Beneficiary prior to the execution and delivery of this Deed of Trust are existing and have

been fully approved by the appropriate governmental authority;

1.1.13 There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Trustor, (and, if Trustor is a partnership, any of its general partners) or the Property which, if adversely determined, would materially impair either the Property or Trustor's ability to perform the covenants or obligations required to be performed under the Loan Documents;

1.1.14 The Property is free from delinquent water charges, sewer rents, taxes and assessments;

1.1.15 As of the date of this Deed of Trust, the Property is free from unrepaired damage caused by fire, flood, accident or other casualty;

1.1.16 As of the date of this Deed of Trust, no part of the Land or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or, to Trustor's knowledge and belief, threatened or contemplated;

1.1.17 Trustor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits adequate for the conduct of its business substantially as now conducted;

1.1.18 The Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. All major building systems located within the Improvements, including without limitation the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition;

1.1.19 Trustor has delivered to Beneficiary true, correct and complete copies of all Contracts and all amendments thereto or modifications thereof;

1.1.20 Trustor and the Property are free from any past due obligations for sales and payroll taxes;

1.1.21 There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Trustor to Beneficiary prior to the date hereof and (ii) the security agreements and financing statements created in favor of Beneficiary.

1.1.22 Trustor has delivered a true, correct and complete schedule (the "Rent Roll") of all leases affecting the Property (collectively, "Leases") as of the date hereof, which accurately and completely sets forth in all material respects, for each such Lease, the following: the name of the tenant, the lease expiration date, extension and renewal provisions, the base rent payable, and the security deposit held thereunder;

1.1.23 No Lease or Contract or easement, right of way, permit or declaration (collectively, all such instruments are referred to hereinafter as "Property Agreements") provides

any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Deed of Trust;

1.1.24 Trustor has not received or given any written communication which alleges that a default exists or, with the giving of notice or the lapse of time, or both, would exist under the provisions of any Property Agreement;

1.1.25 Except as previously disclosed to Beneficiary in writing, there are no brokerage fees or commissions payable by Trustor with respect to the leasing of space at the Property and there are no management fees payable by Trustor with respect to the management of the Property;

1.1.26 Trustor is in compliance with all legal requirements relating to such security deposits;

1.1.27 There are no outstanding options or rights of first refusal to purchase all or any portion of the Property or Trustor's ownership thereof. No condition exists whereby Trustor or any future owner of the Property may be required to purchase any other parcel of land which is subject to any Property Agreement or which gives any person or entity a right to purchase, or right of first refusal with respect to, the Property;

1.1.28 The Property is free and clear of any mechanics' liens or liens in the nature thereof, and no rights are outstanding that under law would give rise to any such liens, any of which liens are or may be prior to, or equal with, the lien of this Deed of Trust, except those which are insured against by the title insurance policy insuring the lien of this Deed of Trust;

1.1.29 To the extent required by Beneficiary, Trustor has delivered to Beneficiary true, correct and complete copies of all Property Agreements;

1.1.30 No default exists or which, with the passing of time or the giving of notice or both would exist under any Property Agreement which would, in the aggregate, have a material adverse effect on the ability of the Trustor to perform any obligations under any Loan Documents (collectively, a "Material Adverse Effect");

1.1.31 To the best knowledge of Trustor, no offset of any right of offset exists respecting continued contributions to be made by any party to any Property Agreement except as expressly set forth therein. Except as previously disclosed to Beneficiary in writing, no material exclusions or restrictions on the utilization, leasing or improvement of the Property (including non-compete agreements) exists in any Property Agreement;

1.1.32 All work, if any, to be performed by Trustor under each of the Property agreements has been substantially performed, all contributions to be made by Trustor to any party to such Property Agreements have been made, and all other conditions to such party's obligations thereunder have been satisfied;

1.1.33 The Property is taxed separately without regard to any other real estate and

constitutes a legally subdivided lot under all applicable legal requirements (or, if not subdivided, no subdivision or platting of the Property is required under applicable legal requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel;

1.1.34 Each Lease constitutes the legal, valid and binding obligation of Trustor and, to the best of Trustor's knowledge and belief, is enforceable against the tenant thereof. No default exists, or with the passing of time or the giving of notice would exist, under any Lease which would, in the aggregate, have a material adverse effect on Trustor or the Property;

1.1.35 To the best of Trustor's knowledge after diligent inquiry, no tenant under any Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Leases have not been waived, released, or otherwise discharged or compromised;

1.1.36 All work to be performed by Trustor under the Leases has been substantially performed, all contributions to be made by Trustor to the tenants thereunder have been made (except as expressly disclosed in the tenant stoppels delivered in connection with the funding of the Note, which contributions are to be made by Trustor) and all other conditions precedent to each such tenant's obligations thereunder have been satisfied;

1.1.37 Each tenant under a Lease has entered into occupancy of the demised premises;

1.1.38 Trustor has delivered to Beneficiary true, correct and complete copies of all Leases described in the Rent Roll;

1.1.39 To the best of Trustor's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors;

1.1.40 No Lease provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Deed of Trust; and

1.1.41 The representations and warranties contained in this Deed of Trust, or the review and inquiry made on behalf of the Trustor therefor, have all been made by persons having the requisite expertise and knowledge to provide such representations and warranties. No statement or fact made by or on behalf of Trustor in this Deed of Trust or in any certificate, document, or schedule furnished to Beneficiary pursuant hereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading (which may be to Trustor's best knowledge where so provided herein). There is no fact presently known to Trustor which has not been disclosed to Beneficiary which would have a Material Adverse Effect.

1.2 Defense of Title. If, while this Deed of Trust is in force, the title to the Property or the interest of Beneficiary or Trustee therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered,

clouded or adversely affected in any manner, Trustor, at Trustor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Beneficiary determines that Trustor is not adequately performing its obligations under this Section, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper and any and all costs and expenses incurred by Beneficiary in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.3 Performance of Obligations. Trustor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note. Trustor shall also pay all charges, fees and other sums required to be paid by Trustor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements to be observed, performed or discharged by Trustor set forth in the Loan Documents in accordance with their terms. Further, Trustor shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Trustor in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Deed of Trust.

1.4 Insurance. Trustor shall, at Trustor's expense, maintain in force and effect on the Property at all times while this Deed of Trust continues in effect the following insurance:

1.4.1 "All-risk" coverage insurance against loss or damage to the Property from all-risk perils. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Trustor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Beneficiary's election, by reference to such indexes, appraisals or information as Beneficiary determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Beneficiary's approval.

1.4.2 Commercial general liability insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$2,000,000.00 per occurrence, \$4,000,000.00 aggregate (inclusive of umbrella coverage) or such lesser amount as Beneficiary



in Beneficiary's sole discretion may accept, combined single limit "per occurrence" for bodily injury, personal injury and property damage. This policy must contain, but not be limited to, coverage for premises and operations liability, products and completed operations liability, contractual liability, hired and non-owned automobile liability, personal injury liability and property damage liability. During any construction on the Land, Trustor's general contractor for such construction shall also provide the insurance required in this subparagraph (b). Beneficiary hereby retains the right to periodically review the amount of said liability insurance being maintained by Trustor and to require an increase in the amount of said liability insurance should Beneficiary deem an increase to be reasonably prudent under then existing circumstances.

1.4.3 Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.

1.4.4 If the Land or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to one hundred (100%) of the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser.

1.4.5 During the period of any construction on the Land or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Beneficiary and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

1.4.6 Rental value or rental income insurance in amounts sufficient to compensate Trustor for all Rents and Profits during a period of not less than one year in which the Property may be damaged or destroyed.

1.4.7 Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Land is located and who have and maintain a rating of at least the third (3rd) highest rating category by Moody's, Duff & Phelps, Fitch Investors or Standard & Poor's, [or a Best rating of A-V or better, at Beneficiary's election], (ii) contain the complete address of the Land (or a complete legal description), (iii) be for a term of at least one year, (iv) contain deductibles no greater than \$10,000 or as otherwise required by Beneficiary, and (v) be subject to the approval of Beneficiary as to insurance companies, amounts, content, forms of policies,

method by which premiums are paid and expiration dates.

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Trustor shall as of the date hereof deliver to Beneficiary evidence that said insurance policies have been paid current as of the date hereof and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent evidencing such insurance satisfactory to Beneficiary. Trustor shall renew all such insurance and deliver to Beneficiary certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Trustor further agrees that all such policies and any other policies covering the Property or any portion thereof, whether or not required or requested by Beneficiary, shall provide that proceeds thereunder shall be payable to Beneficiary, its successors and assigns, pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy and that Beneficiary, its successors and assigns, shall be named as an additional insured under all liability insurance policies. Trustor further agrees that all such insurance policies and any other policies covering the Property or any portion thereof, whether or not required or requested by Beneficiary: (i) shall provide for at least thirty (30) days' prior written notice to Beneficiary prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Beneficiary; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; and (iii) shall either name Beneficiary as an additional insured or waive all rights of subrogation against Beneficiary. The delivery to Beneficiary of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies by Trustor to Beneficiary as further security for the indebtedness secured hereby. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Trustor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Beneficiary or other transferee in the event of such other transfer of title. Approval of any insurance by Beneficiary shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or evidence of their renewal as required herein, Beneficiary may, but shall not be obligated to, procure such insurance and Trustor shall pay all amounts advanced by Beneficiary, together with interest thereon at the Default Interest Rate from and after the date advanced by Beneficiary until actually repaid by Trustor, promptly upon demand by Beneficiary. Any amounts so advanced by Beneficiary, together with interest thereon, shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Beneficiary shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Beneficiary has caused the insurance to be placed with the insurer after failure of Trustor to furnish such insurance.

1.5 Payment of Taxes. Trustor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.6 of this Deed of Trust, all taxes and

assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Trustor shall furnish Beneficiary with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Trustor may in good faith, by appropriate proceedings and upon notice to Beneficiary, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Beneficiary determines, in its subjective opinion, that such contest suspends the obligation to pay the tax and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Beneficiary therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Trustor deposits in the Impound Account (as hereinafter defined) an amount determined by Beneficiary to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Trustor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

1.6 Tax and Insurance Impound Account Trustor shall establish and maintain at all times while this Deed of Trust continues in effect an impound account (the "Impound Account") with Beneficiary for payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby. Simultaneously with the execution hereof, Trustor shall deposit in the Impound Account an amount determined by Beneficiary to be necessary to ensure that there will be on deposit with Beneficiary an amount which, when added to the monthly payments subsequently required to be deposited with Beneficiary hereunder on account of real estate taxes, assessments and insurance premiums, will result in there being on deposit with Beneficiary in the Impound Account an amount sufficient to pay the next due installment of real estate taxes and assessment on the Property at least one (1) month prior to the delinquency date thereof and the next due insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Trustor shall pay to Beneficiary, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Trustor is required to maintain hereunder, each as estimated and determined by Beneficiary. Notwithstanding anything to the contrary herein, if the amount of the monthly deposit being paid at any time pursuant to this Section, multiplied by the number of subsequent monthly installments, when added to the amount held on deposit at such time, will be insufficient to pay, 30 days prior to delinquency, the next installment of insurance and taxes and assessments, as the case may be, due and payable, then

Trustor shall immediately deposit the amount of the deficiency and any failure to do so shall be deemed to be a default under this Deed of Trust. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Beneficiary in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. Trustor shall be responsible for ensuring the receipt by Beneficiary, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Beneficiary shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Beneficiary shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. The Impound Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. No interest on funds contained in the Impound Account shall be paid by Beneficiary to Trustor. The Impound Account is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of taxes, assessments and insurance premiums following receipt of bills, invoices or statements therefor in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Impound Account shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Beneficiary for the purposes of the Impound Account, such excess may be credited by Beneficiary on subsequent payments to be made hereunder or, at the option of Beneficiary, refunded to Trustor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Trustor shall, within ten (10) days after receipt of written notice thereof, deposit with Beneficiary the full amount of any such deficiency. If Trustor shall fail to deposit with Beneficiary the full amount of such deficiency as provided above, Beneficiary shall have the option, but not the obligation, to make such deposit and all amounts so deposited by Beneficiary, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If there is a default under this Deed of Trust which is not cured within any applicable grace or cure period, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Impound Account against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Impound Account shall be deemed to cure any default hereunder. Upon full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Impound Account then in Beneficiary's possession shall be paid over to Trustor and no other party shall have any right or claim thereto.

### 1.7 Replacement Reserve

As additional security for the indebtedness secured hereby, Trustor shall establish and maintain at all times while this Deed of Trust continues in effect a reserve (the "Replacement Reserve") with Beneficiary for payment of costs and expenses incurred by Trustor in connection with the performance of capital repairs, replacements and improvements performed at the Property, including but not limited to work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, elevators and mechanical and HVAC equipment (collectively, the "Repairs"). Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Trustor shall pay to Beneficiary, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, a deposit to the Replacement Reserve in an amount equal to \$726.00. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Replacement Reserve shall be held by Beneficiary in the Replacement Reserve to pay the costs and expenses of Repairs. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, Beneficiary shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Trustor the amount paid or incurred by Trustor in performing such Repairs within ten (10) days following: (a) the receipt by Beneficiary of a written request from Trustor for disbursement from the Replacement Reserve and a certification by Trustor in form and substance satisfactory to Beneficiary that the applicable item of Repair has been completed; (b) the delivery to Beneficiary of invoices, receipts or other evidence satisfactory to Beneficiary verifying the cost of performing the Repairs; (c) for disbursement requests in excess of \$10,000.00, the delivery to Beneficiary of affidavits, lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (d) for disbursement requests in excess of \$10,000.00, delivery to Beneficiary of a certification from an inspecting architect or other third party acceptable to Beneficiary describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (e) for disbursement requests in excess of \$10,000.00, delivery to Beneficiary of a new certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy was required by law, or a certification by Trustor that no new certificate of occupancy was required. Beneficiary shall not be required to make advances from the Replacement Reserve more frequently than once in any ninety (90) day period. In making any payment from the Replacement Reserve, Beneficiary shall be entitled to rely on such request from Trustor without any inquiry into the accuracy, validity or contestability of any such amount. Beneficiary may, at Trustor's expense, make or cause to be made during the term of this Deed of Trust an annual inspection of the Property to determine the need, as determined by Beneficiary in its reasonable judgment, for further Repairs of the Property. In the event that such inspection reveals that further Repairs of the Property are required, Beneficiary shall provide Trustor with a written description of the required Repairs and Trustor shall complete such Repairs to the reasonable satisfaction of Beneficiary within ninety (90) days after the receipt of such description from Beneficiary, or such later date as may be approved by



Beneficiary in its sole discretion. The Replacement Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. Interest on the funds contained in the Replacement Reserve shall be credited to Trustor as provided in Section 4.31 hereof. The Replacement Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of the Repairs, Trustor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Replacement Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If there is a default under this Deed of Trust which is not cured within any applicable grace or cure period, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Replacement Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Replacement Reserve shall be deemed to cure any default hereunder. Upon full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Replacement Reserve then in Beneficiary's possession shall be paid over to Trustor and no other party shall have any right or claim thereto.

### 1.3 Security Interest in Reserves.

As additional security for the payment and performance by Trustor of all duties, responsibilities and obligations under the Note and the other Loan Documents, Trustor hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, deposits, sets over and confirms unto Beneficiary, and hereby grants to Beneficiary a security interest in (i) the Impound Account, the Replacement Reserve, the Repair and Remediation Reserve, and the Lease Termination Payment Reserve (collectively, the "Reserves"); (ii) the accounts into which the Reserves have been deposited; (iii) all insurance of said accounts; (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto; (v) all sums now or hereafter therein or represented thereby; (vi) all replacements, substitutions or proceeds thereof; (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts; (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom); and (ix) all proceeds of the foregoing. Trustor hereby authorizes and consents to the account into which the Reserves have been deposited being held in Beneficiary's name or the name of any entity servicing the Note for Beneficiary and hereby acknowledges and agrees that Beneficiary, or at Beneficiary's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Beneficiary herein may be delivered by Beneficiary at any time to the financial institution wherein the Reserves have been established, and Beneficiary, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Trustor hereby assumes all risk of loss with respect to amounts on deposit in the Reserves, except to the extent such loss is caused by the gross negligence or intentional misconduct of Beneficiary. Trustor hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the



advancement of the funds from the Reserves as set forth herein is at Trustor's direction and is not the exercise by Beneficiary of any right of set-off or other remedy upon a default. Trustor hereby waives all right to withdraw funds from the Reserves. If a default shall occur hereunder or under any other of the Loan Documents which is not cured within any applicable grace or cure period, then Beneficiary may, without notice or demand on Trustor, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other obligations of Trustor under the other Loan Documents in such manner as Beneficiary shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Trustor, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents.

1.9 Casualty and Condemnation. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. All insurance proceeds on the Property (whether or not such insurance was requested or required by Beneficiary), and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Beneficiary. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Beneficiary is hereby authorized, in its own name or in Trustor's name, to adjust any loss covered by any insurance (whether or not such insurance was requested or required by Beneficiary) or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Trustor shall from time to time deliver to Beneficiary any instruments required to permit such participation; provided, however, that Beneficiary shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note and (ii) \$250,000.00. Beneficiary shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

1.9.1 (i) In the event that less than sixty percent (60%) of the Improvements located on the Land have been taken or destroyed, and if:

(a) no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, and

(b) the Property can, in Beneficiary's judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed

prior to the casualty or partial taking causing the loss or damage within the earlier to occur of (i) nine (9) months after the receipt of insurance proceeds or condemnation awards by either Trustor or Beneficiary, and (ii) the stated maturity date of the Note, and

(c) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in subsection 1.9.1(b) above, and

(d) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Trustor, the full amount of which shall at Beneficiary's option have been deposited with Beneficiary) for such restoration or repair (including, without limitation, for any costs and expenses of Beneficiary to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(e) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness secured hereby in full with the same coverage ratio considered by Beneficiary in its determination to make the loan secured hereby, and

(f) Trustor shall have delivered to Beneficiary, at Trustor's sole cost and expense, an appraisal report in form and substance satisfactory to Beneficiary appraising the value of the Property as so restored or repaired to be not less than the appraised value of the Property considered by Beneficiary in its determination to make the loan secured hereby, and

(g) Trustor selects by written notice delivered to Beneficiary within five (5) days after settlement of the aforesaid insurance or condemnation claim,

then, Beneficiary shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required for such restoration or repair, and any funds deposited by Trustor therefor, to Trustor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Beneficiary of plans and specifications, contractors and form of construction contracts and the furnishing to Beneficiary of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Beneficiary in its discretion, with any remainder being applied by Beneficiary for payment of the indebtedness secured hereby in whatever order Beneficiary directs in its absolute discretion.

(i) In all other cases, namely, in the event that sixty percent (60%) or more of the Improvements located on the Land have been taken or destroyed or Trustor does not elect to restore or repair the Property pursuant to 1.9.1 above, or otherwise fails to meet the requirements of clause (a) above, then, in any of such events, Beneficiary shall elect, in Beneficiary's absolute discretion and without regard to the adequacy of Beneficiary's security, to do either of the following: (1) accelerate the maturity date of the Note and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this section to the payment of the indebtedness secured hereby in whatever

order Beneficiary directs in its absolute discretion, with any remainder being paid to Trustor, or (2) notwithstanding that Trustor may have elected not to restore or repair the Property pursuant to the provisions of Section 1.9.1(g) above, require Trustor to restore or repair the Property in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the deposit by Trustor with Beneficiary, within thirty (30) days after demand therefor, of any deficiency necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including Beneficiary's costs and expenses to be incurred in connection therewith, the prior approval by Beneficiary of plans and specifications, contractors and form of construction contracts and the furnishing to Beneficiary of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance satisfactory to Beneficiary in its discretion, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by Beneficiary for payment of the indebtedness secured hereby in whatever order Beneficiary directs in its absolute discretion.

Any reduction in the indebtedness secured hereby resulting from Beneficiary's application of any sums received by it hereunder shall take effect only when Beneficiary actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Trustor shall not be excused in the payment thereof. Partial payments received by Trustor, as described in the preceding sentence, shall be applied first to the final payment due under the Note and thereafter to installments due under the Note in the inverse order of their due date. If Trustor elects or Beneficiary directs Trustor to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Trustor shall promptly and diligently, at Trustor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Trustor shall pay to Beneficiary all costs and expenses of Beneficiary incurred in administering said rebuilding, restoration or repair, provided that Beneficiary makes such proceeds or award available for such purpose. Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation. Beneficiary is hereby irrevocably constituted and appointed the attorney-in-fact of Trustor (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

1.10 Mechanics' Liens. Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Land or the Improvements; provided, however, that, Trustor shall have the right to contest in

good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Beneficiary and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Trustor shall contest any such claim or demand, Trustor shall promptly notify Beneficiary of such contest and thereafter shall, upon Beneficiary's request, promptly provide a bond, cash deposit or other security satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful. If Trustor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Beneficiary may do so and any and all expenses incurred by Beneficiary, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.11 Rents and Profits. Trustor hereby absolutely and presently assigns and transfers to Beneficiary all existing and future Rents and Profits. Trustor hereby grants to Beneficiary the sole, exclusive and immediate right, with or without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Trustor does hereby irrevocably make, constitute and appoint Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof). Beneficiary shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of a default under this Deed of Trust which has not been cured within any applicable grace or cure period, Trustor shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of a default hereunder which has not been cured within any applicable grace or cure period, Trustor's license shall automatically terminate without notice to Trustor and Beneficiary may thereafter, with or without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Trustor shall be the agent of Beneficiary in collection of the Rents and Profits and all of the Rents and Profits so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary and Trustor shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Beneficiary to be applied by Beneficiary as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Beneficiary shall constitute any assumption by Beneficiary of any obligations under any agreement relating thereto. Beneficiary is obligated to account only for such Rents and Profits as are actually collected or received by Beneficiary. Trustor irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Beneficiary of a default hereunder, pay said Rents and Profits to Beneficiary without liability to determine the actual existence of any default claimed by Beneficiary. Trustor hereby waives any right, claim or demand which Trustor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Beneficiary, and any such payment shall discharge such payor's obligation to make such payment to Trustor. All Rents and Profits

collected or received by Beneficiary may be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Beneficiary directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Beneficiary of any rights under this Section nor the application of any Rents and Profits to the secured indebtedness shall cure or be deemed a waiver of any default hereunder. The assignment of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property. Trustor has executed an Assignment of Leases and Rents dated of even date herewith (the "Assignment") in favor of Beneficiary covering all of the right, title and interest of Trustor, as landlord, lessor or licensor, in and to any leases, licenses and occupancy agreements relating to all or portions of the Property. All rights and remedies granted to Beneficiary under the Assignment shall be in addition to and cumulative of all rights and remedies granted to Beneficiary hereunder.

#### 1.12 Leases and Licenses.

1.12.1 Trustor covenants and agrees that it shall not enter into any lease affecting 5,000 square feet or more of the Property or having a term of more than ten (10) years without the prior written approval of Beneficiary, which approval shall not be unreasonably withheld. The request for approval of each such proposed new lease shall be made to Beneficiary in writing and shall state that, pursuant to the terms of this Deed of Trust, failure to approve or disapprove such proposed lease within ten (10) business days is deemed approval and Trustor shall furnish to Beneficiary (and any loan servicer specified from time to time by Beneficiary): (i) such biographical and financial information about the proposed tenant as Beneficiary may require in conjunction with its review, (ii) a copy of the proposed form of lease, and (iii) a summary of the material terms of such proposed lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Beneficiary intends to include among its criteria for approval of any such proposed lease the following: (i) such lease shall be with a bona-fide arm's-length tenant; (ii) such lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and leases in the market area of the Land; (iii) such lease shall provide that the tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Land; and (v) such lease shall contain subordination and attornment provisions (and non-disturbance provisions, if applicable) in form and content acceptable to Beneficiary. Failure of Beneficiary to approve or disapprove any such proposed lease within ten (10) business days after receipt of such written request and all the documents and information required to be furnished to Beneficiary with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

Prior to execution of any other leases of space in the Improvements after the date hereof, Trustor shall submit to Beneficiary, for Beneficiary's prior approval, which approval shall not be unreasonably withheld, a copy of the form lease Trustor plans to use in leasing space in the Improvements or at the Property. All such other leases of space in the Improvements or of any portion of the Property shall be on terms consistent with the terms for similar leases in the

market area of the Land, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Land. Such leases shall also provide for security deposits in reasonable amounts. Trustor shall also submit to Beneficiary for Beneficiary's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed lease, license or occupancy agreement of the Improvements or any portion thereof that differs materially and adversely from the aforementioned form lease.

Trustor shall not execute any lease, license or occupancy agreement for all or a substantial portion of the Property, except for an actual occupancy by the tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases, licenses and occupancy agreements with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. In addition to the requirements set forth in Section 1.18.3, Trustor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, a current rent roll certified by Trustor as being true and correct containing the names of all tenants, lessees and licensees with respect to the Property, the terms of their respective leases, licenses or occupancy agreements, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Beneficiary, Trustor shall deliver to Beneficiary a copy of each such lease, license and occupancy agreement. Trustor shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any such lease, license or occupancy agreement or allow the tenant, lessee or licensee thereunder to withhold payment or rent and, except as otherwise expressly permitted by the terms of Section 1.13 hereof, shall not further assign any such lease, license or occupancy agreement or any such rents. Trustor, at no cost or expense to Beneficiary, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under such leases. Trustor shall not, without the prior written consent of Beneficiary, modify any of the leases, terminate or accept the surrender of any leases, waive or release any other party from the performance or observance of any obligation or condition under such leases except, with respect only to leases affecting less than 5,000 square feet and having a term of ten (10) years or less, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Trustor shall not permit the prepayment of any rents under any of the leases for more than one month prior to the due date thereof.

1.12.2 Each lease, license and occupancy agreement executed after the date hereof affecting any of the Land or the Improvements must provide, in a manner approved by Beneficiary, that the tenant, lessee or licensee, as appropriate, will recognize as its landlord, lessor or licensor and attorn to any person succeeding to the interest of Trustor upon any foreclosure of this Deed of Trust or deed in lieu of foreclosure. Each such lease, license and occupancy agreement shall also provide that, upon request of said successor in interest, the tenant, lessee or licensee shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section (with provisions for non-disturbance of the tenant by Beneficiary acceptable to Beneficiary); provided, however, that such agreement shall provide,



without limitation, that neither Beneficiary, nor any successor-in-interest shall be bound by any payment of rental for more than one (1) month in advance, or any amendment or modification of said lease or rental agreement made without the express written consent of Beneficiary or said successor-in-interest.

1.12.3 Upon the occurrence of a default under this Deed of Trust which is not cured within any applicable grace period, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Deed of Trust, forthwith, upon demand of Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys or by a receiver appointed by a court and without regard to the adequacy of its security. In such event, Beneficiary shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into leases, licenses and occupancy agreements with respect to the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as Beneficiary may deem desirable in its sole discretion, and Trustor expressly acknowledges and agrees that the term of such lease, license or occupancy agreement may extend beyond the date of any foreclosure sale of the Property; it being the intention of Trustor that in such event Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into leases, licenses or occupancy agreements of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Beneficiary in its sole discretion and with like effect as if such leases, licenses or occupancy agreements had been made by Trustor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest, shall not be revocable by Trustor so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any lease, license or occupancy agreement covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, indemnify Beneficiary for, and hold Beneficiary harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Beneficiary under any such lease, license or occupancy agreement or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease, license or occupancy agreement other than those finally determined to have resulted solely from the gross negligence or willful misconduct of Beneficiary. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately due and payable to Beneficiary by Trustor on

demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Beneficiary any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such lease, license or occupancy agreement, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this Section.

### 1.13 Alienation and Further Encumbrances.

1.13.1 Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and their experience in owning and operating properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.6 hereof, in the event that the Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Trustor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary being first obtained, which consent may be withheld in Beneficiary's sole discretion, then, the same shall constitute a default hereunder and Beneficiary shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Trustor were prepaying the entire indebtedness secured hereby on the date of such acceleration. For the purposes of this Section: (i) in the event either Trustor or any of its general partners is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% of the issued and outstanding capital stock of Trustor or any of its general partners or of the beneficial interest of such trust (or the issuance of new shares of capital stock in Trustor or any of its general partners so that immediately after such issuance the total capital stock then issued and outstanding is more than 110% of the total immediately prior to such issuance) shall be deemed to be a transfer of an interest in the Property; and (ii) in the event Trustor or any general partner of Trustor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, or the sale, conveyance, transfer, disposition, alienation, hypothecation or encumbering of all or any portion of the interest of any such general partner, joint venturer or member in Trustor or such general partner (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise), shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, (i) limited partnership interests in Trustor or in any general partner or

member of Trustor shall be freely transferable without the consent of Beneficiary; (ii) minority, non-managing member interests in the Trustor are transferable without the consent of Beneficiary so long as such transfer will not cause a change in the management of the Property or the Improvements, or cause a dissolution of the Trustor, or result, in the aggregate for all such transfers, in the transfer of a majority or controlling interest in Trustor, or otherwise violate any provision of any of the Loan Documents; and (iii) any involuntary transfer caused by the death of Trustor or any general partner, shareholder, member, joint venturer, or beneficial owner of a trust shall not be a default under this Deed of Trust, so long as Trustor is reconstituted, if required, following such death or transfer and so long as those persons responsible for the management of the Property remain unchanged as a result of such death or transfer or any replacement management is approved by Lender.

1.13.2 In the event that Beneficiary shall consent, without in any way implying any obligation on the part of Beneficiary to so consent, to a further encumbrance of the Property, the documents evidencing or creating such encumbrance shall be subject to the prior approval of Beneficiary and shall expressly provide, in addition to any other items required by Beneficiary, that: (i) they are subordinate, secondary, junior and inferior in all respects to the lien of this Deed of Trust, to the security provided by the other Loan Documents and to any and all rights of Beneficiary set forth therein, including, without limitation, Beneficiary's right to payment under the Note and the rights of Beneficiary set forth herein with respect to any insurance proceeds and condemnation awards which are a part of the Property; and (ii) they shall remain subordinate, secondary, junior and inferior in all respects to any amendments, modifications, extensions or changes in this Deed of Trust and the other Loan Documents thereafter entered into by Beneficiary and Trustor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby; and (iii) they are subordinate, secondary, junior and inferior in all respects to all existing and future leases of space in the Improvements and the holder thereof shall, upon request of Beneficiary, specifically subordinate the lien of such encumbrance to all leases of space in the Improvements executed after the date of such encumbrance; and (iv) the holder of such subordinate deed of trust acknowledges and agrees that a conveyance of all or any portion of the Property to such holder by foreclosure, deed in lieu of foreclosure or otherwise shall constitute a default under this Deed of Trust.

1.13.3 Notwithstanding the foregoing provisions of this Section, Beneficiary shall consent to a one-time sale, conveyance or transfer of the Property in its entirety (hereinafter, "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(a) No default is then continuing hereunder or under any of the other Loan Documents;

(b) Trustor gives Beneficiary written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Beneficiary all such information concerning the proposed transferee of the Property (hereinafter, "Buyer") as Beneficiary would require in evaluating an initial extension of credit to a borrower and pays to Beneficiary a non-refundable

application fee in the amount of \$2,500.00. Beneficiary shall have the right to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Beneficiary shall consider the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Beneficiary's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Beneficiary determines to be commercially reasonable in Beneficiary's sole discretion and, if given, may be given subject to such conditions as Beneficiary may deem appropriate;

(c) Trustor pays Beneficiary, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to all out-of-pocket costs and expenses, including, without limitation, attorneys' fees (which fees and costs Trustor agrees to pay whether or not the Sale closes), incurred by Beneficiary in connection with the Sale plus either (i) if the closing of such Sale occurs prior to the assignment of this Deed of Trust to any party other than a shareholder of Beneficiary, or any affiliate of such shareholder, an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note or (ii) if the closing of such sale occurs on or subsequent to such assignment, the amount of \$7,500.00;

(d) The Buyer assumes and agrees to pay the indebtedness secured hereby subject to the provisions of Section 4.27 hereof and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Beneficiary may require;

(e) Trustor and the Buyer execute, without any cost or expense to Beneficiary, new security agreement and new financing statements or financing statement amendments and any additional documents reasonably requested by Beneficiary;

(f) Trustor delivers to Beneficiary, without any cost or expense to Beneficiary, such endorsements to Beneficiary's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Beneficiary may deem necessary at the time of the Sale, all in form and substance satisfactory to Beneficiary, including, without limitation, an endorsement or endorsements to Beneficiary's title insurance policy insuring the lien of this Deed of Trust, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in subparagraph (4) of this Section with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

(g) Trustor executes and delivers to Beneficiary, without any cost or expense to Beneficiary, a release of Beneficiary, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Beneficiary and shall be binding upon the Buyer;

(h) Trustor and Buyer cause to be delivered to Beneficiary, without any cost or expense to Beneficiary, tenant estoppel certificates and subordination and attornment agreements, in form and substance satisfactory to Beneficiary, from such tenants as Beneficiary may request;

(i) Subject to the provisions of Section 4.27 hereof, such Sale is not construed so as to relieve Trustor of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale and Trustor executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate the ratification of said personal liability; and

(j) Such Sale is not construed so as to relieve any current guarantor or indemnitor of its obligations under any guaranty or indemnity agreement executed in connection with the loan secured hereby and each such current guarantor and indemnitor executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement, provided that if the Buyer or a party associated with the Buyer approved by Beneficiary in its sole discretion assumes the obligations of the current guarantor or indemnitor under its guaranty or indemnity agreement and the Buyer or such party associated with the Buyer, as applicable, executes, without any cost or expense to Beneficiary, a new guaranty or indemnity agreement in form and substance satisfactory to Beneficiary, then Beneficiary shall release the current guarantor or indemnitor from all obligations arising under its guaranty or indemnity agreement after the closing of such Sale.

(k) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners or members of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Beneficiary shall require, shall be single purpose, "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Beneficiary. An individual recommended by the Buyer and approved by Beneficiary shall serve as an independent director of the Buyer (if the Buyer is a corporation) or the Buyer's corporate general partner or an independent member or, in Beneficiary's discretion, manager, of Buyer if the Buyer is a limited liability company. The consent of such independent party shall be required for, among other things, any merger, consolidation, dissolution, bankruptcy or insolvency of such independent party or of the Buyer.

(l) The Buyer shall furnish an opinion of counsel satisfactory to Beneficiary and its counsel (i) that the Buyer's formation documents provide for the matters described in subparagraph (10) of this Section, (ii) that the assets of the Buyer will not be consolidated with the assets of any other entity having an interest in, or affiliation with, the Buyer, in the event of bankruptcy or insolvency of any such entity, (iii) that the assumption of the indebtedness evidenced hereby has been duly authorized, executed and delivered, and that the

Loan Documents are valid, binding and enforceable against the Buyer in accordance with their terms, (iv) that the Buyer and any entity which is a controlling stockholder or general partner of Buyer, have been duly organized, and are in existence and good standing, and (v) with respect to such other matters, as Beneficiary may request; and

(m) Beneficiary shall have received evidence in writing from the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with a Secondary Market Transaction to the effect that the proposed transfer will not result in a re-qualification, reduction or withdrawal or any rating initially assigned or to be assigned in a Secondary Market Transaction. For purposes hereof, a "Secondary Market Transaction" shall be (a) any sale of the Deed of Trust, Note and other Loan Documents to one or more investors as a whole loan; (b) a participation of the Loan to one or more investors, (c) any deposit of the Deed of Trust, Note and other Loan Documents with a trust or other entity which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or other entity, or (d) any other sale or transfer of the Loan or any interest therein to one or more investors.

1.14 Payment of Utilities, Assessments, Charges, Etc. Trustor shall pay when due all utility charges which are incurred by Trustor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Land and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Land and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.15 Access Privileges and Inspections. Beneficiary and the agents, representatives and employees of Beneficiary shall, subject to the rights of tenants, have full and free access to the Land and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Trustor relating to the Property. Trustor shall lend assistance to all such agents, representatives and employees of Beneficiary.

1.16 Waste; Alteration of Improvements. Trustor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Trustor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld. Without the prior written consent of Beneficiary, Trustor shall not commence construction of any improvements on the Land other than improvements required for the maintenance or repair of the Property.

1.17 Zoning. Without the prior written consent of Beneficiary, Trustor shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Land or the Improvements. Trustor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Land or the Improvements.



Trustor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Trustor shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Property in full force and effect. Trustor shall operate the Property as a retail center for so long as the indebtedness secured hereby is outstanding. If, under applicable zoning provisions, the use of all or any part of the Land or the Improvements is or becomes a nonconforming use, Trustor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Beneficiary. Further, without Beneficiary's prior written consent, Trustor shall not file or subject any part of the Land or the Improvements to any declaration of condominium or co-operative or convert any part of the Land or the Improvements to a condominium, co-operative or other form of multiple ownership and governance.

1.18 Financial Statements and Books and Records. Trustor shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Beneficiary and its duly authorized representatives shall have the right to examine, copy and audit Trustor's records and books of account at all reasonable times. So long as this Deed of Trust continues in effect, Trustor shall provide to Beneficiary, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Beneficiary as being true and correct by Trustor or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Beneficiary:

1.18.1 copies of all tax returns filed by Trustor, within thirty (30) days after the date of filing;

1.18.2 monthly operating statements for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, operating statements shall be delivered monthly for the first twelve (12) calendar months of the Note;

1.18.3 current rent rolls for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) calendar months of the Note;

1.18.4 annual balance sheets for the Property and annual financial statements for Trustor, each principal or general partner in Trustor, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby within ninety (90) days after the end of each calendar year; and

1.18.5 such other information with respect to the Property, Trustor, the principals or general partners in Trustor, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, which may be requested from time to time by Beneficiary, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Beneficiary within the

applicable time periods or Beneficiary is dissatisfied with the contents of any of the foregoing, in addition to any other rights and remedies of Beneficiary contained herein, Beneficiary shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Beneficiary, in which event Trustor agrees to pay, or to reimburse Beneficiary for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Trustor agrees that any and all materials furnished hereunder are the property of Beneficiary (and Beneficiary's servicer) and may be released to such parties as Beneficiary or its servicer deem appropriate, including FNMA, FHLMC, Donaldson, Lufkin & Jenrette Securities Corporation and any affiliates, any underwriter certificate holder or trustee with respect to securities issues in connection with the sale of this Deed of Trust, or any rating agency responsible for rating such securities from time to time.

1.19 Further Documentation. Trustor shall, on the request of Beneficiary and at the expense of Trustor: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the contents of any of the other Loan Documents; (b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) promptly execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Beneficiary to protect, continue or perfect the liens or the security interests hereunder against the rights or interests of third persons; and (d) promptly furnish to Beneficiary, upon Beneficiary's request, a duly acknowledged written statement and estoppel certificate addressed to such party or parties as directed by Beneficiary and in form and substance supplied by Beneficiary, setting forth all amounts due under the Note, stating whether any event has occurred which, with the passage of time or the giving of notice or both, would constitute an event of default hereunder, stating whether any offsets or defenses exist against the indebtedness secured hereby and containing such other matters as Beneficiary may reasonably require.

1.20 Payment of Costs; Reimbursement to Beneficiary. Trustor shall pay all costs and expenses of every character incurred in connection with the closing of the loan evidenced by the Note and secured hereby or otherwise attributable or chargeable to Trustor as the owner of the Property, including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees and attorneys' fees. If Trustor defaults in any such payment, which default is not cured within any applicable grace or cure period, Beneficiary may pay the same and Trustor shall reimburse Beneficiary on demand for all such costs and expenses incurred or paid by Beneficiary, together with such interest thereon at the Default Interest Rate from and after the date of Beneficiary's making such

payment until reimbursement thereof by Trustor. Any such sums disbursed by Beneficiary, together with such interest thereon, shall be additional indebtedness of Trustor secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Further, Trustor shall promptly notify Beneficiary in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim which, if enforced, could impair or threaten to impair Beneficiary's security hereunder. Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if Trustor fails to perform any of its covenants or agreements contained in this Deed of Trust or in any of the other Loan Documents and such failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Beneficiary's interest in the Property or Beneficiary's right to enforce its security, then Beneficiary may, at its option, with or without notice to Trustor, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants and agreements (without, however, waiving any default of Trustor). Trustor agrees to pay on demand all expenses of Beneficiary incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Beneficiary incurs such expenses until reimbursement thereof by Trustor. Any such expenses so incurred by Beneficiary, together with interest thereon as provided above, shall be additional indebtedness of Trustor secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Beneficiary in its discretion. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Trustor or any person in possession holding under Trustor. Trustor hereby acknowledges and agrees that the remedies set forth in this Section 1.20 shall be exercisable by Beneficiary, and any and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Trustor with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Beneficiary after the filing by Trustor of a voluntary case or the filing against Trustor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Trustor, Beneficiary, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. Subject to the provisions of Section 4.27 hereinafter, Trustor hereby indemnifies and holds Beneficiary harmless from and against all loss, cost and expenses with respect to any default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Land or the Improvements or any nuisance made or suffered thereon, including, in any case, attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial

or appellate level, and such indemnity shall survive payment in full of the indebtedness secured hereby. This Section shall not be construed to require Beneficiary to incur any expenses, make any appearances or take any actions.

1.21 Security Interest. This Deed of Trust is also intended to encumber and create a security interest in, and Trustor hereby grants to Beneficiary a security interest in all sums on deposit with Beneficiary pursuant to the provisions of Sections 1.6, 1.7, 1.8 and Exhibit C hereof or any other Section hereof and all fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Land or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Land and the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing property which is leased by Trustor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Trustor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Beneficiary. Trustor shall, from time to time upon the request of Beneficiary, supply Beneficiary with a current inventory of all of the property in which Beneficiary is granted a security interest hereunder, in such detail as Beneficiary may require. Trustor shall promptly replace all of the Collateral subject to the lien or security interest of this Deed of Trust when worn or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Beneficiary, remove from the Land or the Improvements any of the Collateral subject to the lien or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created by this Deed of Trust and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.13 of this Deed of Trust. All of the Collateral shall be kept at the location of the Land except as otherwise required by the terms of the Loan Documents. Trustor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy. Nothing contained herein is intended to, nor shall it, limit the absolute nature of the assignment of Rents and Profits contained in Section 1.11 of this Deed of Trust.

1.22 Security Agreement. This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to the Collateral in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Except with respect to Rents and Profits to the extent specifically provided herein to the contrary, Beneficiary shall have the right of possession of all

cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property and Trustor shall promptly deliver the same to Beneficiary, endorsed to Beneficiary, without further notice from Beneficiary. Trustor agrees to furnish Beneficiary with notice of any change in the name, identity, corporate structure, residence, or principal place of business or mailing address of Trustor within ten (10) days of the effective date of any such change. Upon the occurrence of any default hereunder not cured within any applicable grace or cure period, Beneficiary shall have the rights and remedies as prescribed in the Deed of Trust, or as prescribed by general law, or as prescribed by any applicable Uniform Commercial Code, all at Beneficiary's election. Any disposition of the Collateral may be conducted by an employee or agent of Beneficiary. Any person, including both Trustor and Beneficiary, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Beneficiary's attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Beneficiary shall have the right to enter upon the Land and the Improvements or any real property where any of the property which is the subject of the security interest granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Trustor, upon demand of Beneficiary, shall assemble such property and make it available to Beneficiary at the Land, a place which is hereby deemed to be reasonably convenient to Beneficiary and Trustor. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to any applicable Uniform Commercial Code:

1.22.1 In the event of a foreclosure sale, the Property may, at the option of Beneficiary, be sold as a whole; and

1.22.2 It shall not be necessary that Beneficiary take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

1.22.3 Beneficiary may appoint or delegate any one or more persons as agent to

perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

The name and address of Trustor (as Debtor under any applicable Uniform Commercial Code) are:

Jefferson Square LLC  
10875 Stragoe River Road  
Chiloquin, OR 97624

The name and address of Beneficiary (as Secured Party under any applicable Uniform Commercial Code) are:

Column Financial, Inc.  
3414 Peachtree Road, N.E., Suite 1140  
Atlanta, Georgia 30326-1113

1.23 Easements and Rights-of-Way. Trustor shall not grant any easement or right-of-way with respect to all or any portion of the Land or the Improvements without the prior written consent of Beneficiary. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Beneficiary consents to the grant of an easement or right-of-way, Beneficiary agrees to grant such consent without charge to Trustor other than expenses, including, without limitation, attorneys' fees, incurred by Beneficiary in the review of Trustor's request and in the preparation of documents effecting the subordination.

1.24 Compliance with Laws. Trustor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that, Trustor may, upon providing Beneficiary with security satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Trustor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

1.25 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon



Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or security agreements or debts secured by deeds of trust, mortgages or security agreements or the interest of the beneficiary, mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Deed of Trust or the indebtedness secured hereby or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable in full thirty (30) days from the giving of such notice.

1.26 Secured Indebtedness. It is understood and agreed that this Deed of Trust shall secure payment of not only the indebtedness evidenced by the Note but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Beneficiary to or for the benefit of Trustor from time to time under this Deed of Trust or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Beneficiary, or otherwise, and all interest accruing thereon, shall be equally secured by this Deed of Trust and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Deed of Trust.

#### 1.27 Trustor's Waivers.

To the full extent permitted by law, Trustor agrees that Trustor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Trustor, for Trustor and Trustor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshaling of the assets of Trustor, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having

jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; and (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Trustor shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Beneficiary under the terms of this Deed of Trust to the payment of the indebtedness secured hereby out of the proceeds of sale of the Property in preference to every other claimant whatever. Further, Trustor hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust or to collect any of the indebtedness secured hereby the fullest extent permitted by law. Trustor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Trustor, Trustor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Beneficiary to enforce any rights of Beneficiary against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

#### 1.28 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

1.28.1 TRUSTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF OREGON OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS DEED OF TRUST OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN KLAMATH COUNTY, OREGON (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY OR TRUSTEE TO BRING ANY SUIT OR ACTION IN ANY OTHER FORUM). TRUSTOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE TRUSTOR AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.5 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

1.23.2 TRUSTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF BENEFICIARY OR TRUSTOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH BENEFICIARY OR TRUSTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

1.29 Contractual Statute of Limitations. Trustor hereby agrees that any claim or cause of action by Trustor against Beneficiary, or any of Beneficiary's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the indebtedness secured hereby, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Beneficiary or by Beneficiary's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Trustor by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one (1) year after Trustor first acquires or reasonably should have acquired knowledge of the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Beneficiary or any other person authorized to accept service of process on behalf of Beneficiary, within thirty (30) days thereafter. Trustor agrees that such one (1) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The one (1) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Beneficiary. This provision shall survive any termination of this Deed of Trust or any of the other Loan Documents.

1.30 Management. The management of the Property shall be by either: (a) Trustor or an entity affiliated with Trustor approved by Beneficiary for so long as Trustor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Beneficiary. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Beneficiary. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Beneficiary. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and

utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

### 1.31 Hazardous Waste and Other Substances.

1.31.1 Trustor hereby represents and warrants to Beneficiary that, as of the date hereof: (i) to the best of Trustor's knowledge, information and belief, the Property is not in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq. and 40 CFR §302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §5901 et seq.), The Federal Water Pollution Control Act (33 U.S.C. §1251 et seq. and 40 CFR §116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to said laws, all as amended; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances; (iv) there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property; (v) Trustor has received no notice of, and to the best of Trustor's knowledge and belief, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor does Trustor know of any basis for such a claim; and (vi) Trustor has received no notice of and, to the best of Trustor's knowledge and belief, there has been no claim by any party that any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Trustor know of any basis for such a claim.

1.31.2 Trustor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants of space in the Improvements, and, without limiting the generality of the foregoing, during the term of this Deed of Trust, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

1.31.3 Trustor shall promptly notify Beneficiary if Trustor shall become aware of the possible existence of any Hazardous Substances on the Property or if Trustor shall become

aware that the Property is or may be in direct or indirect violation of any Environmental Laws. Further, immediately upon receipt of the same, Trustor shall deliver to Beneficiary copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property. Trustor shall, promptly and when and as required, at Trustor's sole cost and expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid, at no expense to Beneficiary, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Trustor fails to do so, Beneficiary may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any and all costs and expenses incurred by Beneficiary in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Trustor hereby grants to Beneficiary and its agents and employees access to the Property and a license to remove any items deemed by Beneficiary to be Hazardous Substances and to do all things Beneficiary shall deem necessary to bring the Property in conformance with Environmental Laws. Trustor covenants and agrees, at Trustor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Beneficiary), and hold Beneficiary harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary or the Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Trustor; (ii) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Trustor; (iii) the failure by Trustor to comply fully with the terms and conditions of this Section 1.31; (iv) the breach of any representation or warranty contained in this Section 1.31; or (v) the enforcement of this Section 1.31, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The indemnity set forth in this

Section 1.31(c) shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section 1.31(c). Beneficiary's rights under this Section shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Beneficiary under this Deed of Trust, the Note and the other Loan Documents.

1.31.4 Upon Beneficiary's request, at any time after the occurrence of a default hereunder, or at such other time as Beneficiary has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Trustor shall provide, at Trustor's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Beneficiary indicating the presence or absence of Hazardous Substances on the Property or an inspection or audit of the Improvements prepared by an engineering or consulting firm approved by Beneficiary indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, Beneficiary may order the same, and Trustor hereby grants to Beneficiary and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.31.5 Without limiting the foregoing, where recommended by a "Phase I" or "Phase II" assessment or otherwise required by Beneficiary to comply with legal requirements, Trustor shall establish and comply with an operations and maintenance program relative to the Property, in form and substance acceptable to Beneficiary, prepared by an environmental consultant acceptable to Beneficiary, which program shall address any Hazardous Substances (including asbestos containing material or lead based paint) that may now or in the future be detected on the Property. Without limiting the generality of the preceding sentence, Beneficiary may require (i) periodic notices or reports to Beneficiary in form, substance and at such intervals as Beneficiary may specify, (ii) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (iii) at Trustor's sole expense, supplemental examination of the Property by consultants specified by Beneficiary, (iv) access to the Property, by Beneficiary, its agents or servicer, to review and assess the environmental condition of the Property and Trustor's compliance with any operations and maintenance program, and (v) variation of the operations and maintenance program in response to the reports provided by any such consultants.

### 1.32 Indemnification; Subrogation.

1.32.1 Trustor shall indemnify, defend and hold Beneficiary harmless against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property or the secured indebtedness; and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Beneficiary's reasonable



attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Beneficiary in connection with the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or the exercise by Beneficiary of any rights or remedies granted to it under this Deed of Trust; provided, however, that nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Beneficiary from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Beneficiary by reason of Beneficiary's willful misconduct or gross negligence.

1.32.2 If Beneficiary is made a party defendant to any litigation or any claim is threatened or brought against Beneficiary concerning the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Trustor shall indemnify, defend and hold Beneficiary harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Beneficiary in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Beneficiary commences an action against Trustor to enforce any of the terms hereof or to prosecute any breach by Trustor of any of the terms hereof or to recover any sum secured hereby, Trustor shall pay to Beneficiary its reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses. The right to such attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such engagement following any breach by Trustor, Trustor shall pay Lender reasonable attorneys' fees (together with reasonable appellate counsel fees, if any) and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Deed of Trust shall include without limitation any attorney or law firm engaged by Beneficiary and Beneficiary's in-house counsel, and all references to "fees and expenses" in this Subsection and elsewhere in this Deed of Trust shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Beneficiary's in-house counsel.

1.32.3 A waiver of subrogation shall be obtained by Trustor from its insurance carrier and, consequently, Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

**1.33 Covenants with Respect to Indebtedness, Operations, Fundamental Changes of Trustor.** Trustor represents, warrants and covenants as of the date hereof and until such time as the loan evidenced by the Note is paid in full, that Trustor:

1.33.1 does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

1.33.2 is not engaged and will not engage in any business other than the ownership, management and operation of the Property;

1.33.3 will not enter into any contract or agreement with any general partner, principal or affiliate of the Trustor or any affiliate of the general partner of the Trustor except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;

1.33.4 has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) affiliate advances or trade payables or accrued expenses incurred in the ordinary course of business of operating the Property; no other debt may be secured (senior, subordinate or *pari passu*) by the Property;

1.33.5 has not made and will not make any loans or advances to any third party (including any affiliate);

1.33.6 is and will be solvent and pay its debt from its assets as the same shall become due;

1.33.7 has done or caused to be done and will do all things necessary to preserve its existence, and will not, nor will any partner, limited or general, or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation or by-laws in a manner which adversely affects the Trustor's existence as a single purpose entity;

1.33.8 will conduct and operate its business as presently conducted and operated;

1.33.9 will maintain books and records and bank accounts separate from those of its affiliates, including its general partner;

1.33.10 will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate thereof, including the general partner or any affiliate of the general partner of the Trustor);

1.33.11 will file its own tax returns;

1.33.12 will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

1.33.13 will not seek the dissolution or winding up, in whole or in part, of the Trustor;

1.33.14 will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

1.33.15 will not commingle the funds and other assets of the Trustor with those of any general partner, any affiliate or any other person;

1.33.16 has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person; and

1.33.17 does not and will not hold itself out to be responsible for the debts or obligations of any other person.

1.34 Handicapped Access. 1.34.1 Trustor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the American with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws").

1.34.2 Notwithstanding any provisions set forth herein or in any other document regarding Trustor's approval of alterations of the Property, Trustor shall not alter the Property in any manner which would increase Trustor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Beneficiary. The foregoing shall apply to tenant improvements constructed by Trustor or by any of its tenants. Beneficiary may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Beneficiary.

1.34.3 Trustor agrees to give prompt notice to Beneficiary of the receipt by Trustor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

### 1.35 Defeasance.

1.35.1 Notwithstanding anything to the contrary contained in the Note, this Mortgage or the Loan Documents, at any time after the second (2nd) anniversary of the date that is the "startup day," within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), of a "real estate mortgage investment conduit" (a "REMIC"), within the meaning of Section 860D of the Code, that holds the Note and provided (unless Beneficiary shall otherwise consent, in its sole discretion) no Event of Default has occurred and is continuing, Trustor shall have the right to obtain the release of the Property from the lien of this Mortgage and the other Loan Documents upon the satisfaction of the following conditions precedent:

(a) not less than thirty (30) days' prior written notice to the Beneficiary specifying a regular payment date under the Note (the "Defeasance Election Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(b) the remittance to the Beneficiary on the related Defeasance

Election Date of interest accrued and unpaid on the outstanding principal amount of the Note to and including the Defeasance Election Date and the scheduled amortization payment due on such Defeasance Election Date, together with all other amounts then due and payable under the Note, this Mortgage and the other Loan Documents;

(c) the irrevocable deposit with the Beneficiary of an amount (the "Defeasance Deposit") of U.S. Government Securities (hereinafter defined), determined by Beneficiary, which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, cash in an amount sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Beneficiary, to pay and discharge the Scheduled Defeasance Payments (hereinafter defined);

(d) the delivery on or prior to the Defeasance Election Date to the Beneficiary of:

(i) a security agreement, in form and substance satisfactory to the Beneficiary, creating a first priority lien on the Defeasance Deposit (the "Defeasance Security Agreement");

(ii) a release of the Property from the lien of this Mortgage, the Assignment and any UCC Financing Statements relating thereto (for execution by the Beneficiary) in a form appropriate for cancellation of such documents in the jurisdiction in which the Property is located;

(iii) certificate of an officer of the general partner of Trustor certifying that the requirements set forth in this subparagraph (a) have been satisfied;

(iv) an opinion of counsel for Trustor in form and substance satisfactory to the Beneficiary to the effect that the Beneficiary has a perfected first priority security interest in the Defeasance Deposit;

(v) an opinion of counsel for Beneficiary, prepared and delivered at Trustor's expense, stating that any trust formed as a REMIC in connection with any Secondary Market Transaction will not fail to maintain its status as a REMIC as a result of such defeasance;

(vi) such other certificates, documents or instruments as the Beneficiary may reasonably request; and

(e) the payment by Trustor to Beneficiary of all reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred or anticipated to be incurred by Beneficiary in connection with the release of the Property from the lien of this Mortgage and the other Loan Documents pursuant to this Section 1.35 including, without limitation, Beneficiary's determination of whether Trustor has satisfied all of the related conditions and requirements set forth in this Section 1.35.

1.35.2 Upon compliance with the requirements of subparagraph (a) above, the Property shall be released from the lien of this Mortgage, the Assignment and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents with respect to the Property shall no longer be applicable and the Defeasance Deposit shall be the sole source of collateral securing the Note. The Beneficiary shall apply the Defeasance Deposit and the payments received therefrom to the payment of all scheduled principal and interest payments (the "Scheduled Defeasance Payments") due on all successive payment dates under the Note after the Defeasance Election Date, including the payment due on the Preferred Prepayment Date (as defined in the Note), assuming for the purposes of this Section 1.35 that all outstanding principal and interest will be due and payable in full on the Preferred Prepayment Date. Trustor, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Deposit shall be made directly to Beneficiary and applied to satisfy the obligations of Trustor under the Note. In connection with such release, if Trustor shall continue to own any assets other than the Defeasance Deposit, Trustor shall establish or designate a single-purpose, bankruptcy-remote successor entity acceptable to Beneficiary (the "Successor Trustor"), with respect to which a nonconsolidation opinion satisfactory in form and substance to Beneficiary has been delivered to Beneficiary (if such a nonconsolidation opinion was required of Trustor in connection with the origination of the indebtedness secured hereby) in which case Trustor shall transfer and assign to the Successor Trustor all obligations, rights and duties under the Note and the Defeasance Security Agreement, together with the pledged Defeasance Deposit. The Successor Trustor shall assume the obligations of Trustor under the Note and the Defeasance Security Agreement, and Trustor shall be relieved of its obligations hereunder and thereunder. Trustor shall pay One Thousand and No/100 Dollars (\$1,000) to the Successor Trustor as consideration for assuming such Trustor obligations.

1.35.3 As used herein, the term "U.S. Government Securities" shall mean securities that are (i) direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality and guaranteed as a full faith and credit obligation which shall be fully and timely paid by the United States of America, which in either case are not callable or redeemable at the option of the issuer thereof (including a depository receipt issued by a bank (as defined in Section 3(a)(2) of the United States Securities Act)) as custodian with respect to any such U.S. Government Securities or a specific payment of principal of or interest on any such U.S. Government Securities held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the securities or the specific payment of principal of or interest on the securities evidenced by such depository receipt.

## ARTICLE II. EVENTS OF DEFAULT

2.1 Events of Default. The occurrence of any of the following events shall be a default hereunder:

2.1.1 Trustor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Beneficiary (except those regarding payments to be made under the Note, which failure is subject to any grace periods set forth in the Note).

2.1.2 Trustor fails to provide insurance as required by Section 1.4 hereof or fails to perform any covenant, agreement obligation, term or condition set forth in Section 1.15 or 1.31 hereof.

2.1.3 Trustor fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Beneficiary to Trustor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Trustor commences to cure such default promptly after receipt of notice thereof from Beneficiary, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

2.1.4 Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Beneficiary by Trustor, by any principal, member, or general partner in Trustor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Beneficiary to have been false or misleading in any material respect at the time made.

2.1.5 There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbering of the Property, Trustor or its general partners or members, or any portion thereof or any interest therein, in violation of Section 1.13 hereof.

2.1.6 A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

2.1.7 Trustor, any principal, member or general partner in Trustor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Trustor, for any such principal, member or general partner of Trustor or for any such indemnitor or guarantor or for a substantial part of the assets of Trustor, of any such principal, member or general partner of Trustor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law



or statute of any jurisdiction, whether now or hereafter in effect.

2.1.8 A petition is filed or any case, proceeding or other action is commenced against Trustor, against any principal, member or general partner of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Trustor, against any principal, member or general partner of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Trustor, of any such principal, member or general partner of Trustor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Trustor, for any such principal, member or general partner of Trustor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Trustor, of any such principal, member or general partner of Trustor or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(a) The Property or any part thereof shall be taken on execution or other process of law in any action against Trustor.

(b) Trustor abandons all or a portion of the Property.

(c) The holder of any lien or security interest on the Property (without implying the consent of Beneficiary to the existence or creation of any such lien or security interest), whether superior or subordinate to this Deed of Trust or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(d) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Beneficiary determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.

(e) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Trustor, any of its principals, members or any general partner.

### ARTICLE III. REMEDIES.

3.1 Remedies Available. If there shall occur a default under this Deed of Trust, and such default has not been cured within any applicable grace or cure period, then this Deed of

Trust is subject to foreclosure as provided by law and Beneficiary may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

3.1.1 Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Trustor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Trustor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Trustor or any person or persons liable for the payment of the indebtedness secured hereby, and Trustor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Beneficiary, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Deed of Trust or deed in lieu of foreclosure.

3.1.2 Foreclosure. Immediately commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Beneficiary.

(a) In the event foreclosure proceedings are filed by Beneficiary, all expenses incident to such proceeding, including, but not limited to, attorneys' fees and costs, shall be paid by Trustor and secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and any other amounts due and unpaid to Beneficiary under the Loan Documents, may be bid by Beneficiary in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood

and agreed that Beneficiary or its assigns may become the purchaser of the Property or any part thereof.

(b) Beneficiary may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Deed of Trust on the remaining portion of the Property foreclosed.

3.1.3 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 recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said 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, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title to such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title 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 at the Default Interest Rate; all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(d) The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold by exercise of the power of sale herein contained and all indebtedness of Trustor to Beneficiary under the Deed of Trust, the Note or other Loan Documents has been paid in full.

3.1.4 Other. Exercise any other right or remedy available hereunder, under any

of the other Loan Documents or at law or in equity.

3.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Deed of Trust shall be applied to the extent funds are so available to the following items in such order as Beneficiary in its discretion may determine:

3.2.1 (a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Beneficiary's right and remedies hereunder and under the other Loan Documents, including, but not limited to, Trustee's fees, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes and payment of all expenses, liabilities and advances of Trustee.

(b) To payment of all sums expended by Beneficiary under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Beneficiary chooses in its sole discretion.

The remainder, if any, of such funds shall be disbursed to Trustor or to the person or persons legally entitled thereto.

3.3 Right and Authority of Receiver or Beneficiary in the Event of Default: Power of Attorney. Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Beneficiary's or the receiver's sole discretion, all at Trustor's expense, Beneficiary or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Trustor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Beneficiary may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Beneficiary's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable;

(i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Trustor as attorney-in-fact and agent of Trustor or in its own name as Beneficiary, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Trustor or Beneficiary; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Beneficiary by this Deed of Trust; and (r) do any acts which Beneficiary in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Deed of Trust. This Deed of Trust shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Trustor or Beneficiary, at the request of Beneficiary, to pay all amounts owing under any lease, contract, concession, license or other agreement to Beneficiary without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Trustor in so doing) any request, notice or demand by Beneficiary for the payment to Beneficiary of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Deed of Trust or under any of the other Loan Documents has actually occurred or is then existing. Trustor hereby constitutes and appoints Beneficiary, its assignees, successors, transferees and nominees, as Trustor's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Trustor's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Beneficiary in connection with any action taken under this Section 3.3, together with interest thereon at the Default Interest Rate from the date of making such advancement by Beneficiary until actually paid by Trustor, shall be a demand obligation owing by Trustor to Beneficiary and shall be secured by this Deed of Trust and by every other instrument securing the secured indebtedness.

3.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Trustor or Trustor's representatives, successors or assigns, or any other persons claiming any interest in the Property, by, through or under Trustor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by

applicable law, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Land is located.

3.5 Notice to Account Debtors. Beneficiary may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Trustor included in the Property to pay Beneficiary directly. Trustor shall at any time or from time to time upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses.

3.6 Cumulative Remedies. All remedies contained in this Deed of Trust are cumulative and Beneficiary shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Beneficiary and may be exercised in any order and as often as occasion therefor shall arise. No act of Beneficiary shall be construed as an election to proceed under any particular provisions of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default hereunder. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7 Payment of Expenses. Trustor shall pay on demand all of Beneficiary's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Trustor at the Default Interest Rate, and the same shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

#### ARTICLE IV. MISCELLANEOUS TERMS AND CONDITIONS

4.1 Time of Essence. Time is of the essence with respect to all provisions of this Deed of Trust.

4.2 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 Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any



portion of the Property 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."

4.3 Certain Rights of Beneficiary. Without affecting Trustor's liability for the payment of any of the indebtedness secured hereby, Beneficiary may from time to time and without notice to Trustor: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Deed of Trust or any agreement subordinating the lien hereof.

4.4 Waiver of Certain Defenses. No action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note or any of the other Loan Documents.

4.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Deed of Trust or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

4.6 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Trustor and the successors and assigns of Trustor, including all successors in interest of Trustor in and to all or any part of the Property, and shall inure to the benefit of Beneficiary, its directors, officers, shareholders, employees and agents and their respective successors and assigns and shall constitute covenants running with the land. All references in this Deed of Trust to Trustor or Beneficiary shall be deemed to include all such parties' successors and assigns, and the term "Beneficiary" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the indebtedness secured hereby. If Trustor consists of more than one person or entity, each will be

jointly and severally liable to perform the obligations of Trustor.

4.7 Severability. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

4.8 Gender. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

4.9 Waiver; Discontinuance of Proceedings. Beneficiary may waive any single default by Trustor hereunder without waiving any other prior or subsequent default. Beneficiary may remedy any default by Trustor hereunder without waiving the default remedied. Neither the failure by Beneficiary to exercise, nor the delay by Beneficiary in exercising, any right, power or remedy upon any default by Trustor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Acceptance by Beneficiary of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder. In case Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Trustor and Beneficiary shall be restored to their former positions with respect to the indebtedness secured hereby, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the same had never been invoked.

4.10 Section Headings. The headings of the sections and paragraphs of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.11 Governing Law. This Deed of Trust will be governed by and construed in accordance with the laws of the State of Oregon, provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling; and provided further that the laws of the state in which the Land is located shall govern as to the creation, priority and enforcement of liens and security interests in

property located in such state.

4.12 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located, the period shall be deemed to end on the next succeeding business day. The term "business day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

4.13 Relationship of the Parties. The relationship between Trustor and Beneficiary is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.14 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

4.15 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Deed of Trust.

4.16 Cross Default. A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

4.17 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Property is located), bear interest at the Default Interest Rate.

4.18 Inconsistency with Other Loan Documents. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions selected by Beneficiary in its sole subjective discretion shall be controlling.

4.19 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

4.20 No Merger. It is the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Beneficiary acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Deed of Trust may be foreclosed as if owned by a stranger to said other or additional interests.

4.21 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior deed of trust or mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Beneficiary to amend, modify, increase, vary, alter or supplement this Deed of Trust, the Note or any of the other Loan Documents and to extend the maturity date of the indebtedness secured hereby and to increase the amount of the indebtedness secured hereby and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Deed of Trust losing its priority over the rights of any such junior lien.

4.22 Beneficiary May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor or the principals or general partners in Trustor, or their respective creditors or property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

4.23 Fixture Filing. This Deed of Trust shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures.

4.24 After-Acquired Property. All property acquired by Trustor after the date of this Deed of Trust which by the terms of this Deed of Trust shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Trustor and without further grant, encumbrance, conveyance or assignment become subject to the lien and security interest created by this Deed of Trust. Nevertheless, Trustor shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, security agreements, financing statements, assignments and assurances as Beneficiary shall require for accomplishing the purposes of this Deed of Trust.

4.25 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to

have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Beneficiary.

4.26 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Deed of Trust may be detached from any counterpart of this Deed of Trust without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Deed of Trust identical in form hereto but having attached to it one or more additional signature pages.

4.27 Personal Liability. Notwithstanding anything to the contrary contained in this Deed of Trust, the liability of Trustor and its members for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Beneficiary or Trustee may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Beneficiary in accordance with the Note, this Deed of Trust and the other Loan Documents.

4.28 Recording and Filing. Trustor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, rerecorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Trustor shall reimburse Beneficiary, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

4.29 Entire Agreement and Modifications. This Deed of Trust and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Deed of Trust and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

4.30 Maximum Interest. The provisions of this Deed of Trust and of all agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("Interest"), to Beneficiary for the use, forbearance or retention of the money

loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Trustor and Beneficiary shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit and if, from any circumstance whatsoever, Beneficiary shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Beneficiary be paid over to Trustor, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This paragraph will control all agreements between Trustor and Beneficiary.

4.31 Interest Payable by Trustor. No interest on funds in the Impound Account, or Repair and Remediation Reserve shall be paid by Beneficiary to Trustor. Beneficiary shall cause funds in the Replacement Reserve to be deposited into interest bearing accounts of the type customarily maintained by Beneficiary or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based on the daily outstanding balance in the Replacement Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Replacement Reserve by Trustor. All interest earned on amounts contributed to the Replacement Reserve shall be retained by Beneficiary and added to the balance in the Replacement Reserve and shall be disbursed for payment of the items for which other funds in the Replacement Reserve are to be disbursed.

4.32 Consent Required of Beneficiary or Trustee. Any consent by Beneficiary or Trustee in any single instance shall not be deemed or construed to be Beneficiary's or Trustee's consent in any like matter arising at a subsequent date and the failure of Beneficiary or Trustee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Beneficiary or Trustee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Beneficiary or Trustee pursuant hereto shall be narrowly construed to be applicable only to Trustor and the matter identified in such consent or approval and no third party shall claim any benefit by reason, and any such consent or approval shall not be deemed to constitute Beneficiary or Trustee a venturer or partner with Trustor nor shall privity of contract be presumed to have been established with any such third party. If Beneficiary deems it to be in its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers, consultants and surveyors) with respect to a request for consent or approval, Trustor shall reimburse Beneficiary for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.



4.33 Consents and Approvals. Wherever in this Deed of Trust or any of the other Loan Documents the Beneficiary's consent or approval is required, if Beneficiary shall delay or refuse such consent or approval, Trustor in no event shall be entitled to make, nor shall Trustor make, any claim, and Trustor hereby waives any claim, for money damages (nor shall Trustor claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Trustor that Beneficiary unreasonably withheld or unreasonably delayed its consent or approval. Trustor's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment, and such remedy shall be available only in those cases in which Trustor has expressly agreed in writing not to unreasonably withhold its consent or where as a matter of law Beneficiary may not unreasonably withhold its consent. Unless this Deed of Trust or another Loan Document, as applicable, expressly provided that Beneficiary's consent or approval may not be unreasonably withheld or delayed, Beneficiary may withhold or delay such consent or approval in Beneficiary's sole discretion.

4.34 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit C attached hereto, if any, shall be a part of this Deed of Trust and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Deed of Trust, be deemed to control.

4.35 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.

4.36 Cooperation with Rating Agencies. Trustor covenants and agrees that in the event Beneficiary decides to include the Loan as an asset of a Secondary Market Transaction, Trustor shall, at Beneficiary's request, (a) meet with representatives of rating agencies to discuss the business and operations of the Property, and (b) cooperate with the reasonable requests of rating agencies in connection with all of the foregoing.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY BENEFICIARY AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY TO BE ENFORCEABLE.

[Signatures begin on next page]

15576

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

JEFFERSON SQUARE OF KLAMATH,  
L.L.C., an Oregon limited liability company

By: 

Walter Seput  
Managing Member

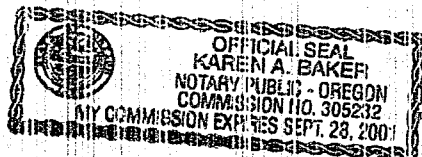
Attest: \_\_\_\_\_

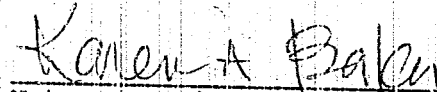
Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON            )  
                                  ) ss. May 1, 1998  
County of Klamath        )

Personally appeared Walter Seput who, being duly sworn, stated he is Managing Member of Jefferson Square of Klamath, L.L.C. an Oregon limited liability company and that said instrument was signed on behalf of said company by authority of its Board of Directors; and he acknowledged said instrument to be its voluntary act and deed. Before me:



  
Notary Public for Oregon

My Commission expires: Sept 28, 2001

EXHIBIT ALEGAL DESCRIPTION

The following described real property sitsuate in Klamath County, Oregon:

**PARCEL 1:**

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South  $00^{\circ}00'30''$  East along the Westerly boundary of said Section 3 and the centerline of Washburn Way 817.42 feet to the intersection with the present centerline of South Sixth Street, formerly know as The Dalles-California Highway, recorded bearing South  $55^{\circ}52'30''$  East, at Engineer's Station 8+17.42 on Washburn Way and Engineer's Station 16+14.87 on South Sixth Street; thence continuing South  $00^{\circ}00'30''$  East along said West line of Section 3 and the centerline of Washburn Way 48.32 feet to a point on the South boundary of South Sixth Street which is distant 40 feet at right angles from the centerline of South Sixth Street at Engineer's Station 16+41.99; thence South  $55^{\circ}52'30''$  East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true point of beginning continuing South  $55^{\circ}52'30''$  East 794.98 feet; thence at right angles South  $34^{\circ}07'30''$  West 204.00 feet; thence South  $55^{\circ}52'30''$  East parallel to South Sixth Street 146.00 feet; thence at right angles South  $34^{\circ}07'30''$  West 183.80 feet to the Northerly right of way line of Oregon, California and Eastern Railroad; thence North  $66^{\circ}57'30''$  West along said line 982.11 feet to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of the centerline of said Washburn Way, thence North  $00^{\circ}00'30''$  West along said right of way line 503.30 feet; thence South  $55^{\circ}52'30''$  East 306.22 feet; thence North  $34^{\circ}07'30''$  East 186.00 feet to the true point of beginning.

**PARCEL 2:**

Easement as disclosed in Reciprocal Easement and Maintenance Agreement, recorded December 8, 1995, in Volume M95 page 33582, Deed Records of Klamath County, Oregon.

EXHIBIT B

## PERMITTED EXCEPTIONS

1. Easement, including the terms and provisions thereof.  
Given By: Swan Lake Moulding Company  
To: The California Oregon Power Company  
Dated: December 23, 1946  
Recorded: February 4, 1947, in Volume 202 on page 29  
Deed Records of Klamath County, Oregon.
2. Reservations and restrictions in Deed  
Given by: Swan Lake Moulding Company  
To: State of Oregon, by and through its Department of Transportation, Highway Division  
Dated: August 16, 1976  
Recorded: August 25, 1976, in Volume M76 on page 13262,  
Deed Records of Klamath County, Oregon.
3. Reservations and restrictions in Deed  
Given by: Swan Lake Moulding Company  
To: State of Oregon, by and through its Department of Transportation, Highway Division  
Dated: May 17, 1977  
Recorded: October 13, 1977, in Volume M77 on page 18538  
Deed Records of Klamath County, Oregon.
4. Right of Way Easement, including the terms and provisions thereof.  
Given By: Swan Lake Moulding Company  
To: CP National Corporation  
Dated: August 20, 1978  
Recorded: August 22, 1978, in Volume M78 on page 19978  
Deed Records of Klamath County, Oregon.
5. Right of Way Easement, including the terms and provisions thereof.  
Given By: Swan Lake Moulding Company  
To: Pacific Power & Light Company  
Dated: December 6, 1979  
Recorded: December 17, 1979, in Volume M79 on page 28608  
Deed Records of Klamath County, Oregon.
6. Right of Way Easement, including the terms and provisions thereof.  
Given By: Frederick D. Ehlers and Helen Ann Ehlers,  
And Swan Lake Moulding Company  
To: Pacific Power & Light Company  
Dated: June 9, 1980  
Recorded: October 8, 1980, in Volume M80 on page 19506  
Deed Records of Klamath County, Oregon.

7. Easements as disclosed in Memorandum of Lease  
From: Frederick D. Ehlers and Helen A. Ehlers  
To: Burger King Corporation  
Dated: November 15, 1982  
Recorded: January 8, 1983, in Volume M83 on page 284  
Deed Records of Klamath County, Oregon

8. Reciprocal Easement and Maintenance Agreement, including the terms and provisions thereof,  
Between: Swan Lake Moulding Company  
and The Travelers Insurance Company  
Dated: December 6, 1995  
Recorded: December 8, 1995, in Volume M85 on page 33582  
Deed Records of Klamath County, Oregon

9. Any rights, interests or claims which may exist or arise by reason of the following facts shown by a survey dated June 26, 1997 by Adkins Consulting Engineers, Inc. and inspection of said land:

- (a) The fact that the Railroad Tie retaining wall encroaches on the northwesterly boundary.
- (b) The fact that the Livestock chute and the fence encroaches on the northwesterly boundary
- (c) The fact that there is a building overhang encroachment on the Northeasterly boundary
- (d) The fact that a swamp cooler encroaches on the easterly boundary
- (e) The fact that the Jefferson Square Mall Building Improvement is located on the easement area of Pacific Power & Light in Volume M80 on page 18608

EXHIBIT C

## ADDITIONAL STIPULATIONS

C-1 Repair and Remediation Reserve. Prior to the execution of this Deed of Trust, Beneficiary has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Trustor has established with the Beneficiary a reserve in the amount of \$154,000.00 (the "Repair and Remediation Reserve") by depositing such amount with Beneficiary. Trustor shall cause each of the items of immediate repair described in that certain engineering report (the "Engineering Report") dated March 13, 1998, prepared by National Assessment Corporation (a copy of such report has been provided to, and receipt of which is hereby acknowledged by, Trustor) and the items set forth in the list of contemplated repairs and/or improvements submitted by Trustor to Beneficiary prior to the execution of this Deed of Trust ("Trustor's Contemplated Improvements") (all repairs set forth in the Engineering Report and the contemplated repairs set forth in Trustor's Contemplated Improvements collectively referred to herein as the "Deferred Maintenance") to be completed, performed, remediated and corrected to the satisfaction of Beneficiary and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before one year from the date hereof, as such time period may be extended by Beneficiary in its sole discretion. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Repair and Remediation Reserve shall be held by Beneficiary in the Repair and Remediation Reserve to pay the costs and expenses of completing the Deferred Maintenance; provided, however, after repair of the items described in the Engineering Report, the funds remaining in the Repair and Remediation Reserve may be used to complete Trustor's Contemplated Improvements or any other capital improvements or repairs related to the Property. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, Beneficiary shall, to the extent funds are available for such purpose in the Repair and Remediation Reserve, disburse to Trustor the amount paid or incurred by Trustor in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Beneficiary of a written request from Trustor for disbursement from the Repair and Remediation Reserve which shall include a certification by Trustor that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Deed of Trust, (b) delivery to Beneficiary of invoices, receipts or other evidence satisfactory to Beneficiary verifying the costs of the Deferred Maintenance to be reimbursed, (c) delivery to Beneficiary of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Beneficiary describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Property is, as a result of such work, in compliance with all applicable laws, ordinances, rules and regulations relating to the Deferred Maintenance so performed, and (d) delivery to Beneficiary of affidavits, lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property. Beneficiary shall not be



required to make advances from the Repair and Remediation Reserve more frequently than once in any thirty (30) day period. In making any payment from the Repair and Remediation Reserve, Beneficiary shall be entitled to rely on such request from Beneficiary without any inquiry into the accuracy, validity or contestability of any such amount. Trustor hereby grants to Beneficiary, as additional security for payment of the indebtedness secured hereby, a security interest in the Repair and Remediation Reserve. The Repair and Remediation Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. No interest on the funds contained in the Repair and Remediation Reserve shall be paid by Beneficiary to Trustor. The Repair and Remediation Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Repair and Remediation Reserve are inadequate to pay the costs of the Deferred Maintenance, Trustor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Repair and Remediation Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If there is a default under this Deed of Trust which is not cured within any applicable grace or cure period, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Repair and Remediation Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Repair and Remediation Reserve shall be deemed to cure any default hereunder. Upon the earlier to occur of full payment of the indebtedness secured hereby in accordance with its terms, the completion of the Deferred Maintenance to the satisfaction of the Beneficiary or at such earlier time as Beneficiary may elect, the balance of the Repair and Remediation Reserve then in Beneficiary's possession shall be paid over to Trustor and no other party shall have any right or claim thereto.

C-2 Interest Payable. Beneficiary shall cause funds in the Lease Termination Payment Reserve to be deposited into interest bearing accounts of the type customarily maintained by Beneficiary or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based upon the daily outstanding balance in the Lease Termination Payment Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the Lease Termination Payment Reserve by Trustor. All interest earned on amounts contributed in the Lease Termination Payment Reserve shall be retained by Beneficiary and added to the balance in the Lease Termination Payment Reserve, and shall be disbursed for payment of the items for which other funds in the Lease Termination Payment Reserve are to be disbursed.

C-3 Lease Termination Payment Reserve.

(a) For purposes of this Deed of Trust, the capitalized terms defined in this Section C-3 shall have the meanings ascribed to them as follows:

(i) "Lease Termination Payment" shall mean any amounts paid under leases containing early lease termination options in favor of tenants thereunder, in connection with the exercise of such tenant's lease termination rights, other than amounts paid for rent and other charges in respect of periods prior to the lease termination date.

(ii) "Lease Termination Payment Reserve" shall have the meaning hereinafter set forth in this Section C-3.

(iii) "Termination Tenant Improvement Expenditure" shall mean the costs and expenses incurred by Trustor for payment of leasing commissions, lease buy-outs and expenditures related to repairs, replacements and improvements to Termination Tenant Improvement Space in connection with releasing such Termination Tenant Improvement Space.

(iv) "Termination Tenant Improvement Space" shall mean any space subject to a lease under which the tenant has exercised an option to terminate such lease and the required Lease Termination Payment has been received.

(b) As additional security for the indebtedness secured hereby, Trustor shall establish and maintain at all times while this Deed of Trust continues in effect a reserve (the "Lease Termination Payment Reserve") with Beneficiary for payment of Tenant Termination Improvement Expenditures. Notwithstanding any provision of this Deed of Trust or the other Loan Documents to the contrary, Trustor shall, within one (1) business day of receipt thereof, deliver all Lease Termination Payments (or cause the Manager to deliver all such Lease Termination Payments) to Beneficiary for deposit in the Lease Termination Payment Reserve.

(c) (1) Trustor shall pay all Termination Tenant Improvement Expenditures without regard to the amount then available in the Lease Termination Payment Reserve. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and, subject to the provisions hereof, Beneficiary shall, to the extent funds are available for such purpose in the Lease Termination Payment Reserve, apply any portion of each Lease Termination Payment held in the Lease Termination Payment Sub-Account in payment of the Termination Tenant Improvement Expenditures incurred with respect to the corresponding Termination Tenant Improvement Space to which such Lease Termination Payment relates. Provided that (i) Beneficiary has received written notice at least ten (10) days prior to the due date of any payment relating to such Termination Tenant Improvement Expenditures, not more frequently than once each month, or if Trustor makes timely payment therefor, not more than forty-five (45) days after Trustor has made such payment; (ii) Trustor furnishes Beneficiary with a written disbursement request for the payment or reimbursement of such Termination Tenant Improvement Expenditures, not more frequently than once each month; (iii) Trustor shall have theretofore furnished Beneficiary with satisfactory evidence of the progress and/or completion of tenant improvement work, the cost of tenant improvement work, satisfactory evidence that any and all completed tenant improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Beneficiary to substantiate the use of such funds and establish that the Termination Tenant Improvement Expenditures which are the subject of such disbursement request represent completed or partially

completed capital work and improvements performed at all or any portion of the applicable Termination Tenant Improvement Space and (iv) there are sufficient funds available in the Lease Termination Payment Reserve, Beneficiary shall make such payment to Trustor for payment of the Tenant Improvement Expenditures or for reimbursement for Trustor's payment thereof, within ten (10) days after receipt of the documentation required thereby.

(2) If Trustor shall have received approval from Beneficiary to perform any capital improvements to the Property requiring Beneficiary's approval, so long as no default hereunder or under the other Loan Documents has occurred and is continuing and, subject to the provisions hereof, Beneficiary shall permit Trustor to utilize any funds on deposit in the Lease Termination Payment Reserve in payment of the related capital improvement expenditures. Provided that (i) Beneficiary has received written notice at least ten (10) days prior to the due date of any payment relating to such capital improvement expenditure or if Trustor makes timely payment therefor, not more than forty-five (45) days after Trustor has made such payment; (ii) Trustor furnishes Beneficiary with a written disbursement request for the payment or reimbursement of such capital expenditures not more frequently than once a month; (iii) Trustor shall have theretofore furnished Beneficiary with satisfactory evidence of the progress and/or completion of any capital improvement work, satisfactory evidence that any and all completed capital improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Beneficiary to substantiate the use of such funds and (iv) there are sufficient funds available in the Lease Termination Payment Reserve, Beneficiary shall make such payment to Trustor for payment of such capital improvement expenditures or reimbursement of Trustor's payment thereof, within ten (10) days after receipt of the documentation required in connection therewith.

(3) Notwithstanding anything contained herein to the contrary, Beneficiary shall disburse to Trustor any portion of any Lease Termination Payment remaining on deposit in the Lease Termination Payment Reserve promptly after (i) the related Termination Tenant Improvement Space has been leased to an unrelated, third-party tenant for a net effective rent which is at an arm's length competitive market rate; (ii) such tenant has taken possession of such Termination Tenant Improvement Space and the obligation to pay rent under the related lease shall have commenced; and (iii) such tenant shall have delivered an estoppel certificate confirming that it has accepted such Termination Tenant space, that Trustor has completed any construction obligations under the related lease and that the obligation to pay rent thereunder has commenced.

(4) Beneficiary shall not be required to make advances from the Lease Termination Payment Reserve more frequently than once in any thirty (30) day period. In making any payment from the Lease Termination Payment Reserve, Beneficiary shall be entitled to rely on such request from Trustor without any inquiry into the accuracy, validity or contestability of any such amount. Beneficiary may (but without any obligation to do so), at Trustor's expense, make or cause to be made during the term of this Deed of Trust an inspection of the Property to verify the scope, nature and quality of the work for which payment is being requested from the Lease Termination Payment Reserve.

(d) The Lease Termination Payment Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. Interest on the funds contained in the Lease Termination Payment Reserve shall be credited to Trustor as provided in Exhibit C-2 hereinabove. The Lease Termination Payment Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this Section in accordance with the terms hereof and beyond allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Lease Termination Payment Reserve are inadequate to pay the cost of any Termination Tenant Improvement Expenses, Trustor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Lease Termination Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If there is a default under this Deed of Trust which is not cured within any applicable grace or cure period, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Lease Termination Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Lease Termination Payment Reserve shall be deemed to cure any default hereunder. Upon full payment of the indebtedness secured hereby in accordance Beneficiary shall not be required to make advances from the Lease Termination Payment Reserve more frequently than once in any thirty (30) day period. In making any payment from the Lease Termination Payment Reserve, Beneficiary shall be entitled to rely on such request from Trustor without any inquiry into the accuracy, validity or contestability of any such amount. Beneficiary may (but without any obligation to do so), at Trustor's expense, make or cause to be made during the term of this Deed of Trust an inspection of the Property to verify the scope, nature and quality of the work for which payment is being requested from the Lease Termination Payment Reserve. Upon repayment in full of the indebtedness secured by this Deed of Trust in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Replacement Reserve then in Beneficiary's possession shall be paid over to Trustor and no other party shall have any right or claim thereto.

C-4 Additional Oregon Provisions. Unless Trustor provides Beneficiary with evidence of the insurance coverage as required by this Deed of Trust or any other loan document, Beneficiary may purchase insurance at Trustor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Trustor's interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim Trustor makes or any claim made against Trustor. Trustor may later cancel this coverage by providing evidence that it has obtained property coverage elsewhere.

Trustor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Trustor's contract or loan balance. If the cost is added to the contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date Trustor's prior coverage lapsed or the date Trustor failed to provide proof of coverage.

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

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of First American Title the 8th day  
of May A.D., 19 98 at 9:22 o'clock A. M., and duly recorded in Vol. 1498,  
of Mortgages on Page 15517

FEE \$355.00

E. Bernethy G. Letson County Clerk